

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



United States Court of Appeals  
JOINT APPENDIX for the District of Columbia Circuit

IN THE FILED JUL 11 1966

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEERS

*Appellant,*

v.

BANGOR AND AROOSTOOK RAILROAD  
COMPANY, ET AL.,

*Appellees.*

No. 20,192

BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEERS,

*Appellant,*

v.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, ET AL.,

*Appellees.*

No. 20,193

BANGOR AND AROOSTOOK RAILROAD  
COMPANY, ET AL.,

*Appellants,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEERS,

*Appellee.*

No. 20,215

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, ET AL.,

*Appellants,*

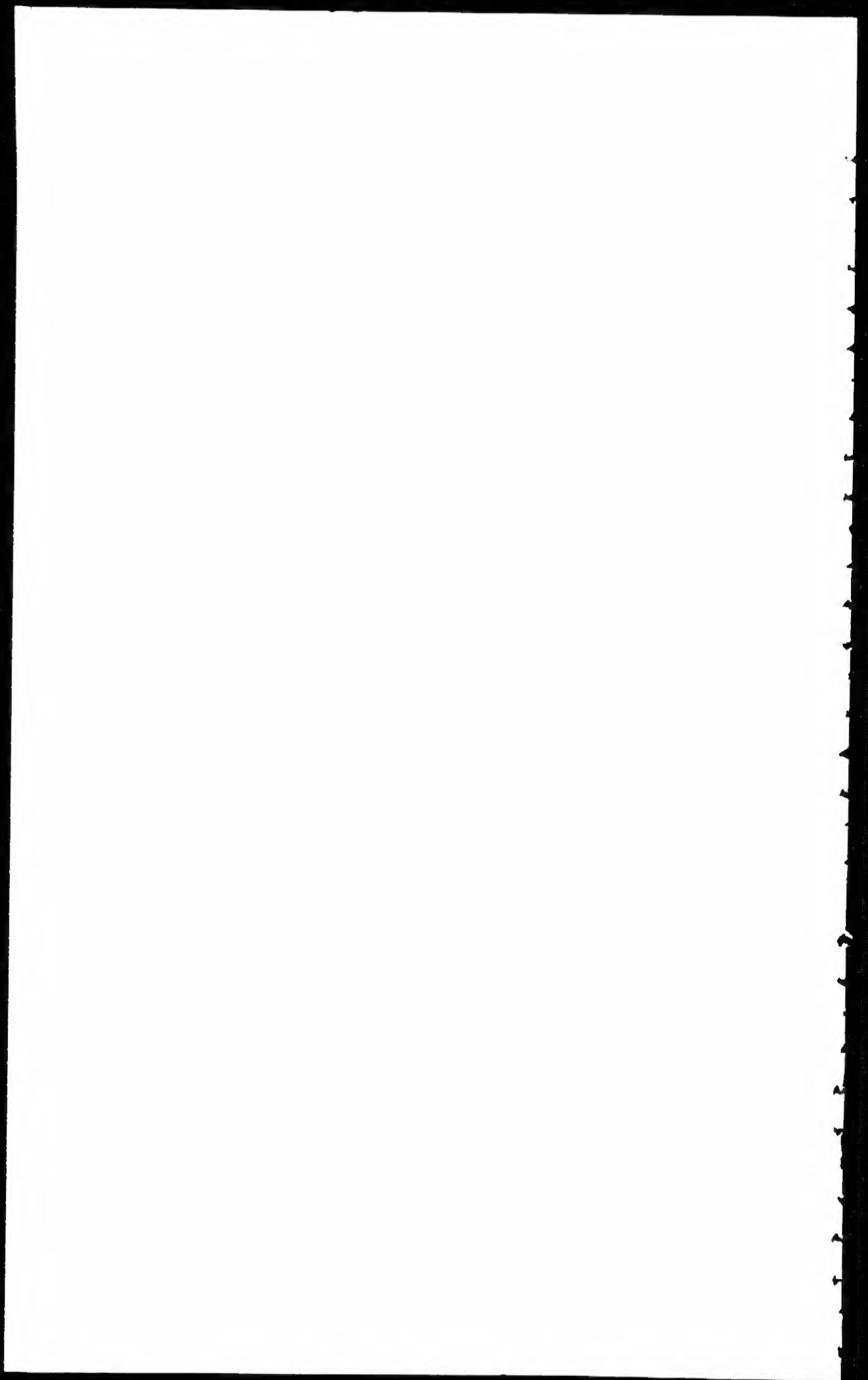
v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEERS,

*Appellee.*

No. 20,216

Appeals from Judgments of the United States District Court  
for the District of Columbia





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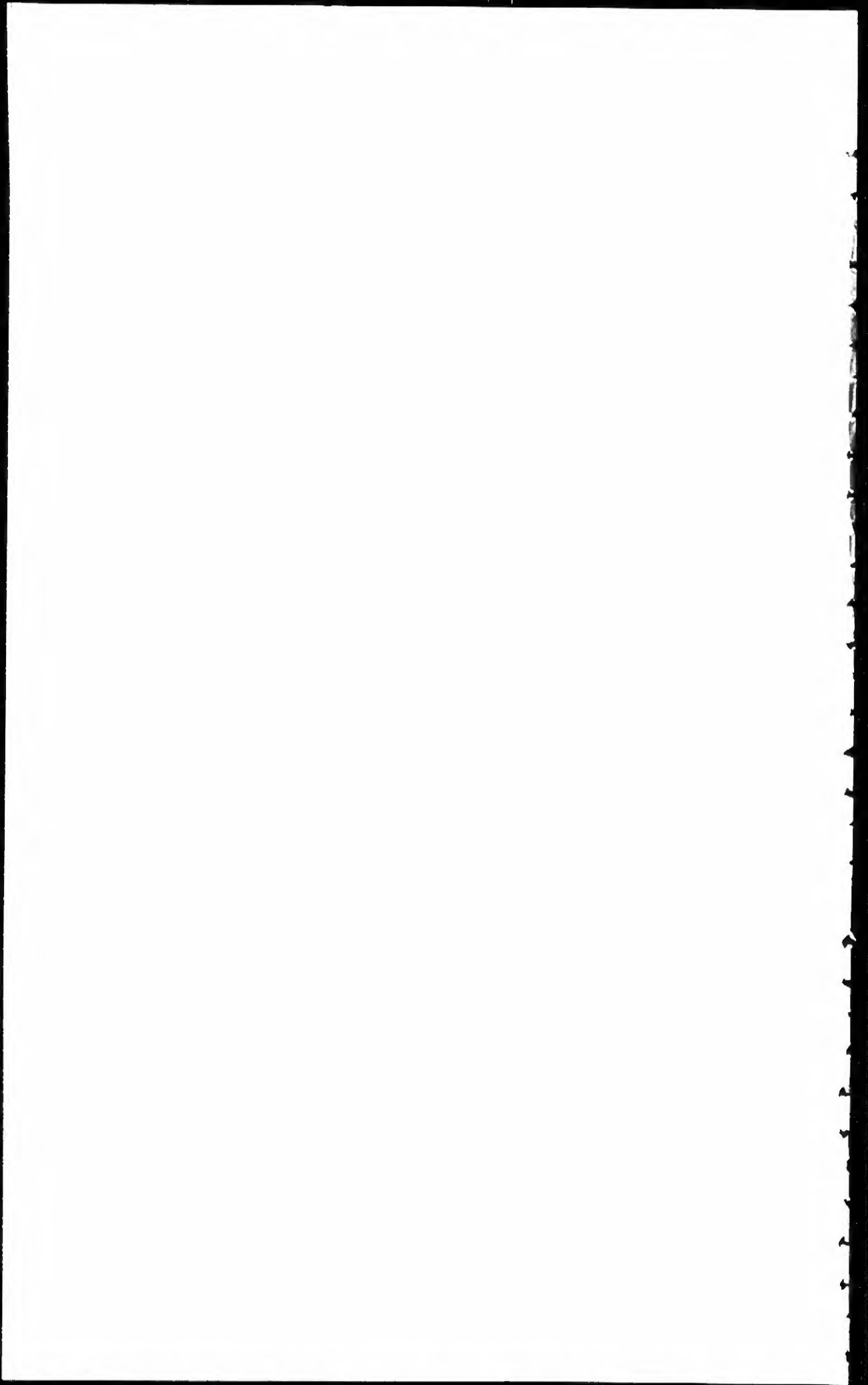
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No. 20,216

Appeals from Judgments of the United States District Court  
for the District of Columbia

**JOINT APPENDIX**

No. 66 C 320—Filed February 17, 1966—N.D. ILL. [Eastern Div.]

Filed March 24, 1966—Civil Action No. 784-66

[pursuant to transfer]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Plaintiff,*

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,  
THE BALTIMORE & OHIO RAILROAD COMPANY, THE BALTI-  
MORE AND OHIO CHICAGO TERMINAL R.R. Co., THE NEW  
YORK CENTRAL RAILROAD COMPANY, INDIANA HARBOR BELT  
RAILROAD, THE NORFOLK AND WESTERN RAILWAY COMPANY,  
THE PENNSYLVANIA RAILROAD COMPANY, CHICAGO AND  
NORTH WESTERN RAILWAY COMPANY, CHICAGO, MILWAU-  
KEE, ST. PAUL AND PACIFIC R.R., ILLINOIS CENTRAL RAIL-  
ROAD, THE BELT RAILWAY COMPANY OF CHICAGO, NORTHERN  
PACIFIC RAILWAY, SOUTHERN PACIFIC COMPANY, UNION  
PACIFIC RAILROAD, THE CHESAPEAKE AND OHIO RAILWAY  
COMPANY AND GULF MOBILE AND OHIO R.R., *Defendants*

**Complaint For Declaratory Judgment and Injunctive Relief**

1. This action arises under the Railway Labor Act (44 Stat. 577, as amended, 45 U.S.C. §§ 151-160). The jurisdiction of this court is grounded upon 28 U.S.C. §§ 1331, 1337, 2201 and 2202. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of ten thousand dollars.

2. The plaintiff is an unincorporated association and a labor organization that engages in collective bargaining in the railroad industry. The headquarters and principal office of the plaintiff is 15401 Detroit Road, Lakewood, Ohio.

3. The membership of the plaintiff consists of locomotive firemen, locomotive engineers, hostlers and hostler helpers employed by railroads engaged in the transportation of freight and passenger by rail in interstate commerce and including the defendant carriers and the other railroads represented by the defendant railroads in this action.

4. The plaintiff is the duly authorized and accredited representative for the purposes of the Railway Labor Act of the foregoing crafts or classes of employees, and has been recognized as such for many years by such railroads.

5. The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, The Baltimore and Ohio Chicago Terminal R.R. Co., The New York Central Railroad Company, Indiana Harbor Belt Railroad, The Norfolk and Western Railway Company, The Pennsylvania Railroad Company, Chicago and North Western Railway Company, Chicago, Milwaukee, St. Paul and Pacific R.R., Illinois Central Railroad, The Belt Railway Company of Chicago, Northern Pacific Railway, Southern Pacific Company, Union Pacific Railroad, the Chesapeake and Ohio Railway Company and Gulf Mobile and Ohio R.R. are each engaged in interstate commerce, are each a "carrier" as defined under Section 1 of the Railway Labor Act (45 U.S.C. § 151) and are each subject to the provisions of the Act.

6. The defendants named in paragraph 5 are sued herein individually and as representatives of a class of railroads that is so numerous as to make it impracticable to bring them all before the court. The class consists of more than 180 railroads listed in Exhibit A to this complaint. Each of said railroads, in addition to those named herein as defendants, is engaged in Interstate Commerce, is a "carrier" as defined in Section 1 of the Railway Labor Act and is subject to the provisions of the Act. The character of the rights plaintiff seeks in this action to enforce against the members of the class are several, and there are common



questions of law and fact affecting the several rights and common relief is sought against the members of the class. The aforesaid named defendant carriers fairly insure the adequate representation of all members of the class.

7. On or about June 30, 1947, plaintiff, acting as collective bargaining representative of locomotive firemen, hostlers and hostler helpers employed on most of the railroads of the country, served certain proposals regarding the employment of firemen, hostlers and hostler helpers on said railroads, pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156). On or about the same date certain counterproposals were served by said railroads on the plaintiff pursuant to Section 6 of the Railway Labor Act. Negotiations between the parties followed but they were unable to arrive at an agreement, and an Emergency Board was appointed by the President of the United States, pursuant to Section 10 of the Railway Labor Act (45 U.S.C. §160) to investigate the dispute between the parties and to report to the President.

8. The Emergency Board submitted its report, together with its Findings and Recommendations, to the President of the United States on September 19, 1949, and thereafter the parties settled their dispute by entering into a certain Mediation Agreement (Case A-3391), dated May 17, 1950, hereinafter referred to as the National Diesel Agreement. The defendant railroads, parties to the instant suit, and most of the class of railroads represented by the defendant railroads were parties to the Mediation Agreement.

9. Section 4 of said Agreement reads as follows:

*"Section 4—A fireman, or a helper, taken from the seniority ranks of the firemen, shall be employed on all locomotives;"* (with exceptions not relevant to the instant suit).



10. The railroads in the class of railroads represented by the named defendant railroads not parties to the National Diesel Agreement, within a relatively short time thereafter, entered into agreements of a substantially identical character as that set forth in the preceding paragraphs.

11. On November 2, 1959, each of the defendant railroads as well as most of the other railroads listed in Exhibit A to the complaint served upon the plaintiff written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156) of proposed changes in certain existing agreements, rules, regulations, interpretations and/or practices affecting employees represented by plaintiff. Among other matters, the railroads proposed, in the portion of such notices identified as "Use of Firemen (Helpers) on other than Steam Power" (attached as Exhibit B hereto), to eliminate all agreements, rules, regulations, interpretations and practices, however established, which required the use of firemen (helpers) on other than steam powered engines in freight or yard service, and to establish a rule which in general would leave such matters to managerial discretion, all as is more fully set forth in Exhibit B hereto.

12. On or about September 7, 1960, the plaintiff served upon the defendant railroads and each of the railroads in the class of railroads represented by the defendant railroads, written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156) of a proposed agreement affecting the employees represented by the plaintiff, the relevant portion of which notice is attached as Exhibit C. Implementing proposals were later served by the plaintiff. The relevant portion thereof is identified as "Minimum Safe Crew Consist," Exhibit D hereto.

13. Notices similar to those served by the plaintiff were served at the same time by the Brotherhood of Locomotive Engineers, The Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen and the

Switchmen's Union of North America, the other labor organizations in the railroad industry representing for collective bargaining purposes the crafts and classes of employees, including locomotive firemen, engineers, conductors, trainmen, brakemen, switchmen and other employees known as "operating employees" employed by the defendant railroads and the railroads in the class of railroads represented by the defendant railroads.

14. Following the serving of the notices described in paragraphs 12 and 13 and unsuccessful efforts to negotiate on a national level, a special presidential study commission was appointed. This Commission made its report to the President on February 28th, 1962 with recommendations. Following a judicial determination (*Locomotive Engineers v. B. & O. R. Co.* 372 U. S. 284 (1963)) that there was no legal barrier to the carriers initiating the rule changes contained in their notices of November 2nd, 1959, and following the continued inability of the parties to negotiate an agreement, the National Mediation Board recommended that the case be submitted to binding arbitration. Disagreement continued and an Emergency Board was established pursuant to Section 10 of the Railway Labor Act. The report of this Board, Emergency Board 154, was submitted to the President on May 13, 1963 with recommendations.

15. National negotiations ensued during the 30 day period following the date of the report of Emergency Board 154 and for some time thereafter and were carried on with the assistance of the Secretary of Labor. The Secretary of Labor in a memorandum to the parties dated July 5, 1963 suggested accepting the report and recommendations of Emergency Board 154 as a basis for the establishment of a joint rule to be in effect for two years and initiated meetings with the parties to consider these suggestions.

No agreement having been reached, on July 22, 1963, President John F. Kennedy delivered a message to Con-

gress relative to the disputes and as a part of such message submitted a proposed joint resolution to provide for the settlement of such disputes, known as House Joint Resolution 565 and Senate Joint Resolution 102. Section 4 of such Joint Resolution read as follows:

"Sec. 4. The Commission shall act upon any application filed with it under Section 1 of this joint resolution, by way of approval, modified approval, or disapproval; and upon such approval or modified approval an interim rule consistent therewith shall be put into effect and shall remain operative until the parties reach agreement regarding the matter involved or, if no agreement is reached, for 2 years following the date the interim rule goes into effect."

The Commission referred to in Section 4 is the Interstate Commerce Commission. The resolution contemplated that the Interstate Commerce Commission would make determinations as to interim rules which would be binding upon the parties for two years from the date the interim rule went into effect.

16. Following the introduction of the resolutions and while hearings were being held on the Resolutions in the House and in the Senate, the Secretary of Labor continued his efforts to mediate the dispute. On August 2nd, 1963, he made a proposal to the parties for an interim agreement for a period of two or three years. Although some progress was made by the Secretary of Labor in narrowing the issues in dispute, his mediatory efforts came to a conclusion with the enactment by Congress, after hearings held on the Resolutions, of Public Law 88-108 (77 Stat. 132, 45 U.S.C.A. §157 (1965 Pocket Parts)).

17. Under Section 1 of Public Law 88-108, both the carriers and the organizations were prohibited from making any changes in rates of pay, rules and working conditions, pursuant to the notices above set forth of November 2, 1959

(Exhibit B) and September 7, 1960 (Exhibit C), except by agreement or pursuant to an arbitration award made in accordance with the Act and were prohibited from engaging in any strike or lockout over any dispute arising from such notices.

Under Section 2 a Board of Arbitration was created. Under Section 3, the Secretary of Labor was required to submit to the Board and the parties in dispute a copy of his statement of August 2, 1963 and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request. The Board was required to make a decision as to what disposition should be made of the portions of the carriers' notices of November 2, 1959 attached to this complaint as Exhibit B and the organizations' notices of September 7, 1960, attached to this complaint as Exhibits C and D. Section 3 further provided that the award "shall be binding upon both the carriers and organizations parties to this dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the Board of Arbitration."

18. Section 4 of the Act in the last sentence provides:

"The Award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise."

Section 8 of the Act provides:

"This joint resolution shall expire one hundred and eighty days after the date of its enactment, except that it shall remain in effect with respect to the last sentence of Section 4 for the period prescribed in that sentence."

19. Under date of November 26, 1963 the Arbitration Board created under Public Law 88-108 known as Arbitra-

tion Board 282 rendered its award. The relevant portions of the award are as follows:

"I. DISPOSITION OF SECTION 6 NOTICES.

Those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other Than Steam Power' and 'Consist of Road and Yard Crews' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals pertaining thereto are denied, except to the extent hereinafter provided.

IV. DURATION.

This award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise."

Relevant also to the issues in this case is the following portion of the opinion of the neutral members.

"The Board's award will remain in force only two years. Within that time the effect of attrition may be such that the number of firemen or train crew jobs actually eliminated may be comparatively small. Problems that are as deeply rooted and that have been as long in development as those here involved, however, cannot be solved overnight. In this case, rapid readjustment could have a human price too great to pay. If, through this award, principles are established and procedures set in motion which contribute to a final solution, our hopes as neutral members of this Board will have been fulfilled." (Opinion p. 5)

20. Following a holding of the courts (*BLF&E v. Chicago B & Q.R. Co.*, 225 F. Supp. 11 (1964), aff'd, 331 F. 2d 1020 (D.C. Cir., 1964), cert. den., 377 U.S. 918 (1964)) that the award was valid, an agreement was reached be-

tween the plaintiff and the defendant carriers and the carriers in the class of carriers represented by the defendants, parties to the award, by which the terms of the award were continued in force through March 30, 1966.

21. Pursuant to the provisions of Public Law 88-108, the award of Arbitration Board 282 made a complete and final disposition of the carriers' notices of November 2, 1959 and the organizations' notices of September 7, 1960, attached hereto as exhibits B, C and D. By virtue of the provisions of Section 1 of Public Law 88-108, rates of pay, rules and working conditions in effect at the time of the enactment of Public Law 88-108 continue unchanged except by agreement or pursuant to the arbitration award. The agreements in effect at the time of the enactment of Public Law 88-108 with relation to the manning of diesel locomotives were the National Diesel Agreement and agreements of an identical character, referred to in paragraphs 8, 9 and 10 above. No agreement having been reached by the parties to change these agreements upon the expiration of the Award on March 30th, 1966, these agreements will be in force and effect on and after March 31, 1966.

22. It is the position of the defendant railroads and the carriers listed in Exhibit A hereto, that all of the terms, conditions, practices and procedures established pursuant to award of Arbitration Board 282 are incorporated in the collective agreements and continue in effect unless and until changed in accordance with the Railway Labor Act after the award itself expires. Defendant railroads and the railroads listed in Exhibit A have made their intent clear that upon the expiration of the award they will repudiate the National Diesel Agreement and agreements of a substantially identical character, which agreements are referred to above in paragraphs 8, 9 and 10 and that on and after March 31, 1966 they intend to operate diesel locomotives in road freight and yard service without firemen

(helpers) in violation of such agreements, in violation of Public Law 88-108 and in violation of the Railway Labor Act, as amended, and in particular Section 2, Seventh thereof, which reads as follows:

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

23. On or about November 15, 1965, plaintiff served on each of the defendant railroads and upon most of the carriers listed in Exhibit A attached hereto, three separate notices pursuant to the provisions of Section 6 of the Railway Labor Act, (1) seeking to change the collective bargaining agreement covering the employment of firemen (helpers) on other than steam power, (2) providing relief to employees whose employment was terminated by misapplication of award of Arbitration Board 282, and to otherwise remedy the hardships and abuses incurred in the administration of that Award, and (3) seeking to negotiate an apprenticeship agreement. The first proposal makes clear the position of the organization that upon the expiration of the award of Arbitration Board 282, the National Diesel Agreement and similar agreements with respect to employment of firemen (helpers) will be in full force and effect and that on and after 12:01 A.M. on March 31, 1966, the railroads served will be expected to comply fully with such agreements unless another agreement should be reached in the interim.

24. On or about January 31, 1966 defendant railroads and most, if not all of the railroads listed in Exhibit A attached hereto, served upon representatives of the plaintiff a letter, accompanied by an attachment, apparently a notice served pursuant to Section 6 of the Railway Labor Act, although not identified as such in accordance with the



custom and practice of such railroads. A copy of a typical letter and attachment is hereto attached as Exhibit E. The proposal contained in Part A of the attachment to the letter assumes that the terms and conditions imposed by the award of Arbitration Board 282 continue in effect subsequent to March 30, 1966, and makes clear the intention of the defendant railroads and the railroads listed in Exhibit A who have served the proposal upon plaintiffs, to repudiate the National Diesel Agreement and agreements of a substantially identical character, in violation of such agreements and in violation of Public Law 88-108 and the Railway Labor Act as set forth in paragraph 22 hereof. The letter and attachment thereto also fail to conform to the requirements of the Railway Labor Act in that no date is fixed at which the carriers' proposed changes in the collective agreement are to become effective. The carriers, instead, state that they propose "at the appropriate time to revise and supplement the agreement rules, practices and procedures now in effect, in accordance with the proposal set forth in Attachment A appended hereto."

25. For the reasons set forth in paragraphs 11 to 21 above, among others, it is the position of the plaintiff that under the terms of Public Law 88-108 and the award of Arbitration Board 282 issued thereunder, the award comes to an end at 12:01 A.M. on March 31, 1966 and that all of its terms and conditions have no force and effect after March 30, 1966. Beginning at 12:01 A.M. on March 31, 1966, the collective agreements with relation to manning of diesel locomotives in road freight and yard service which were in effect at the time of the enactment of Public Law 88-108, and specifically the National Diesel Agreement and agreements of a substantially identical character, to the extent to which they were temporarily superseded by the award, again become effective at such time.

26. The illegal plan of the defendant railroads and the carriers listed in Exhibit A hereto attached, upon the



expiration of the award of Arbitration Board 282, to repudiate the National Diesel Agreement and agreements substantially identical thereto, will cause great and irreparable injuries to the employees of the defendant railroads and the carriers listed in Exhibit A represented by the plaintiff for collective bargaining purposes under the Railway Labor Act.

If not restrained or enjoined by this Court, defendant railroads and the carriers listed in Exhibit A attached hereto, intend to violate their collective agreements with the plaintiff in violation of the Railway Labor Act by intentionally and deliberately operating freight and passenger trains and switching locomotives, or requiring such trains and locomotives to be operated, without a locomotive firemen or helper, taken from the seniority ranks of the firemen's craft, being a part of the crew of said trains or locomotives or by assigning employees from other crafts to take the place and perform the services of the fireman or helper in the crews of said trains of locomotives, and by severing from their employ employees in the class or craft of firemen-helpers, thereby depriving them and their families of their livelihood and valuable seniority rights earned in years of devotion and attachment to the railroad industry, and by otherwise imposing great and incalculable hardship on their employees represented by the plaintiff.

WHEREFORE, plaintiff prays that this Court:

I. Adjudge and Declare that pursuant to the provisions of Public Law 88-108 and the award of Arbitration Board 282, the award of Arbitration Board 282 has no force and effect after 12:01 A.M., March 31, 1966 and as of that time the defendant railroads and the carriers listed in Exhibit A are bound by the Railway Labor Act to observe the terms and conditions of the Mediation Agreement dated May 17, 1950, set forth above in paragraphs 8 and 9, or agreements of a substantially identical character entered into on dates other than May 17, 1950.

II. Adjudge and Declare that the letter and attachment served by the defendant railroads and the railroads listed in Exhibit A attached hereto, on or about January 31, 1966, (Exhibit E) fails to comply with the requirements of the Railway Labor Act and the proposal which is set forth in Part A to the attachment thereto is in violation of the Railway Labor Act and Public Law 88-108.

III. Grant to the plaintiff temporary and permanent injunctive relief restraining the defendants, their officers and agents and the class of railroads listed in Exhibit A represented by defendant railroads, from violating, on or after 12:01 A.M. March 31, 1966 the provisions of the Mediation Agreement dated May 17, 1950, set forth above in paragraphs 8 and 9 or agreements of a substantially identical character entered into on dates other than May 17, 1950.

IV. Grant to the plaintiff its costs and such other and further relief that may be necessary and proper in the circumstances.

HAROLD C. HEISS

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BY: /s/ALEX ELSON

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Chicago, Illinois

**EXHIBIT B**

See, *infra*, Exhibit A, at pp. 70-71.

**EXHIBIT C**

NOTICE OF SEPTEMBER 7, 1960

"A. Negotiate agreements providing for the following:

\* \* \* \*

Consist of crews including Engineers (Motormen), Firemen (Helpers), Conductors, Brakemen, Hostlers, Hostler Helpers, Yard Conductors (Foremen) and Yard Brakemen (Helpers), the adequacy of the number of men in the crew and their qualifications and training. \* \* \*

**EXHIBIT D**

See, *infra*, Exhibit C, at p. 73.

**EXHIBIT E**

See, *infra*, Exhibit BB at pp. 186-88.

Civil Action No. 66 C 320

Filed March 10, 1966—N.D. ILL. [Eastern Div.]

Filed March 24, 1966—Civil Action No. 784-66

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION  
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Plaintiff,*

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,  
ET AL., *Defendants.*

**Defendants' Answer to Complaint and Counterclaim  
For Declaratory Judgment and Injunctive Relief**

Defendants answer the Complaint for Declaratory Judgment and Injunctive Relief as follows:

1. Defendants admit the allegations in the third sentence of paragraph 1 of the Complaint. The remaining allegations in that paragraph constitute conclusions of law not requiring an answer.

2. Defendants admit the allegations in paragraph 2 of the Complaint.

3. Defendants admit that the membership of plaintiff includes certain locomotive firemen, locomotive engineers, hostlers and/or hostler helpers employed by defendants and by certain other railroads engaged in the transportation of freight and passengers by rail in interstate commerce, and otherwise deny the allegations in paragraph 3 of the Complaint.

4. Defendants admit that plaintiff is the duly authorized and accredited representative under the Railway Labor Act of certain locomotive firemen, hostlers and/or hostler helpers employed by defendants and certain other railroads, and admit that plaintiff has been so recognized for a number of years which varies as among the various railroads, and otherwise deny the allegations in paragraph 4 of the Complaint.

5. Defendants admit the allegations in paragraph 5 of the Complaint.

6. Defendants admit that they are sued herein individually and that plaintiff seeks to sue defendants as representatives of a class of railroads. The remaining allegations in paragraph 6 of the Complaint constitute conclusions of law as to the propriety of a class action, as to the membership of the alleged class and as to the character of the rights which plaintiff seeks in this action to enforce, which defendants are not required to answer.

7. Defendants admit the allegations in paragraph 7 of the Complaint.

8. Defendants admit the allegations in the first sentence of paragraph 8 of the Complaint, admit that defendants and most of the railroads listed in Exhibit A to the Complaint were among the parties to the National Diesel Agreement, and otherwise deny the allegations in paragraph 8 of the Complaint.

9. Defendants admit that the partial quotation of Section 4 of the National Diesel Agreement is accurate insofar as it goes, refer the Court to that Agreement for the complete text of Section 4 and of the other provisions of the Agreement, and otherwise deny the allegations in paragraph 9 of the Complaint.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the Complaint.

11. Defendants admit the allegations in paragraph 11 of the Complaint, but deny any implication that Exhibit A to the Complaint is a complete list of the railroads that served the notices in question.

12. Defendants admit that, on or about September 7, 1960, plaintiff served upon the defendants and most of the other railroads in the United States written notices pursuant to Section 6 of the Railway Labor Act of a proposed agreement affecting employees represented by plaintiff, admit that Exhibit C to the Complaint is an accurate copy of a portion of that notice, admit that implementing proposals were later served by plaintiff, admit that Exhibit D to the Complaint is an accurate copy of a portion of such implementing proposals and otherwise deny the allegations in paragraph 12 of the Complaint.

13. Defendants admit the allegations in paragraph 13 of the Complaint insofar as they relate to defendants, and admit that the notices referred to therein were served by the labor organizations referred to therein upon most of the other railroads in the United States.

14. Defendants admit and allege that national negotiations following service of the notices described in paragraphs 12 and 13 of the Complaint did not succeed in reaching an agreement, that a special presidential commission (the Presidential Railroad Commission) was appointed by the President of the United States, that the Commission made its report to the President on February 28, 1963 with recommendations for settlement of the dis-

pute, and that those recommendations were accepted by defendants and the other railroads concerned but were rejected by plaintiff and the other labor organizations concerned. Defendants further admit and allege that the Supreme Court, in *Locomotive Engineers v. B. & O. R. Co.*, 372 U.S. 284 (1963), held that the notices served by defendants and other railroads on November 2, 1959 were proper under the Railway Labor Act and that the said carriers were free to initiate the rules changes proposed in those notices as the procedures provided in the Railway Labor Act for considering such proposals had been exhausted following the refusal of plaintiff and the other labor organizations to accept a recommendation by the National Mediation Board that the case be submitted to binding arbitration, subject only to the possible creation of an Emergency Board under Section 10 of the Railway Labor Act (45 U.S.C. §10). Defendants further admit and allege that disagreement continued and an Emergency Board was established by the President pursuant to Section 10 of the Railway Labor Act, that the report of the Emergency Board (No. 154) was submitted to the President on May 13, 1963 with recommendations for settlement of the dispute, that the recommendations of the Emergency Board were accepted by defendants and the other railroads concerned but were rejected by plaintiff and the other labor organizations concerned, and that defendants and such other railroads were free to implement the rules changes proposed in their notices of November 2, 1959 thirty days after the submission of the report by the Emergency Board to the President. The allegations in paragraph 14 of the Complaint otherwise are denied.

15. Defendants admit that national negotiations ensued during the thirty-day period following the date of the report of Emergency Board 154 and for some time thereafter and that such negotiations, on and after June 4, 1963, were carried on with the assistance of the Secretary of Labor among others, and otherwise deny the allegations in the first sentence of paragraph 15 of the Complaint. De-

fendants admit and allege that the Secretary of Labor submitted a memorandum to the parties, dated July 5, 1963, in which he made recommendations for settlement of the dispute which were accepted by defendants and the other railroads concerned but rejected by plaintiff and the other labor organizations concerned, but defendants deny that the purported summary in the second sentence of paragraph 15 of the Complaint of the recommendations or suggestions made by the Secretary of Labor is complete or accurate and refer the Court to the memorandum by the Secretary of Labor for such recommendations or suggestions. Defendants admit the allegations in the third, fourth and fifth sentences of paragraph 15 of the Complaint. Defendants deny that the allegations in the sixth sentence of paragraph 15 of the Complaint constitute a complete and accurate summary of the Joint Resolution submitted to the Congress by the President, and refer the Court to that Joint Resolution for its contents.

16. Defendants admit the allegations in the first sentence of paragraph 16 of the Complaint. Defendants admit that the Secretary of Labor, on April 2, 1963, made a proposal to the parties for settlement of the dispute, but deny that the allegations in the second sentence of paragraph 16 of the Complaint constitute a complete and accurate summary of the contents of that proposal and refer the Court to the Statement of the Secretary of Labor for the contents of his proposal. Defendants admit and allege that in negotiations by the parties upon the suggestions made by the Secretary of Labor tentative agreements were reached with respect to portions of such suggestions, that the carriers parties to the dispute accepted and the organizations parties to the dispute accepted with certain reservations the Secretary of Labor's suggestion that the fireman (helper) and crew consist issues be resolved by binding arbitration but the parties were unable to agree upon the terms and procedures of an arbitration agreement, and that thereafter the Secretary of Labor concluded his mediatory efforts and Public Law 88-108 (77 Stat. 132) was



enacted by the Congress which statute differed substantially from the Joint Resolution submitted to the Congress by the President. Defendants otherwise deny the allegations in the last sentence of paragraph 16 of the Complaint.

17. Defendants deny that the allegations in paragraph 17 of the Complaint constitute a complete and accurate summary of Public Law 88-108, and refer the Court to that statute for its contents.

18. Defendants admit that the last sentence of Section 4 of Public Law 88-108 and Section 8 of that Act are accurately quoted in paragraph 18 of the Complaint.

19. Defendants admit the allegations in the first sentence of paragraph 19 of the Complaint. Defendants admit the accuracy of the quotations in paragraph 19 of the Complaint from the Award by Arbitration Board No. 282 and from the Opinion of the Neutral Members, but deny that the portions thus quoted are the only relevant portions of the said Award and Opinion and refer the Court to that Award and Opinion for their complete contents.

20. Defendants admit and allege that the validity of the Award by Arbitration Board No. 282 was upheld and that petitions to impeach that Award, filed by the plaintiff herein and by other labor organizations in the United States District Court for the District of Columbia pursuant to Section 9 of the Railway Labor Act and Section 4 of Public Law 88-108, were dismissed in *Brotherhood of Loc. Fire. & Eng. v. Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (D. D.C., 1964), aff'd, 331 F. 2d 1020 (D. C. Cir., 1964), cert. den., 377 U.S. 918 (1964). Defendants further admit and allege that the carriers parties to that proceeding, including the defendants herein, and the plaintiff herein entered into agreements providing, among other things, that the carriers would not take any action under Section II of the Award by Arbitration Board No. 282 until ten days after the Supreme Court acted upon the petition for writ of certiorari filed in the aforesaid proceeding (with



certain exceptions) and that "the period of time during which the provisions of Section II of the Award shall continue in force shall be one year, eleven months, and three days following the grant or denial of *certiorari* by the Supreme Court of the United States." Defendants admit and allege that *certiorari* was denied in the aforesaid proceeding on April 27, 1964, and that "one year, eleven months, and three days" thereafter continues through March 30, 1966. The allegations in paragraph 20 of the Complaint otherwise are denied.

21. Defendants admit and allege that Section 3 of Public Law 88-108 provided, among other things, that the Award by Arbitration Board No. 282 "shall be binding on both the carriers and organizations parties to the dispute and shall constitute a complete and final disposition" of "those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other than Steam Power' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals thereto." Defendants admit and allege that the Award by Arbitration Board No. 282 did constitute a complete and final disposition of the portions of the notices so specified, including those portions set forth in Exhibits B, C and D to the Complaint. Defendants otherwise deny the allegations in the first sentence of paragraph 21 of the Complaint. Defendants deny that the allegations in the second sentence of paragraph 21 of the Complaint constitute a complete and accurate summary of the provisions of Section 1 of Public Law 88-108, and refer the Court to said Section 1 for its contents. Defendants admit and allege that to the extent the National Diesel Agreement and any other agreements of an identical character were being applied at the time of the enactment of Public Law 88-108 by defendants or by other carriers who served the notices of November 2, 1959, that such was being done voluntarily rather than by any requirement of the said agreements or of the Rail-

way Labor Act, and otherwise deny the allegations in the third sentence of paragraph 21 of the Complaint. Defendants deny the allegations in the fourth sentence of paragraph 21 of the Complaint.

22. Defendants deny that the first sentence in paragraph 22 of the Complaint adequately summarizes the position of defendants or of the carriers listed in Exhibit A to the Complaint, and allege that their position is more fully and accurately summarized in paragraph 49 of the Counterclaim which is incorporated herein by reference. Defendants admit that they and other railroads subject to the Award intend to operate diesel locomotives in road freight and yard service without firemen (helpers) on and after March 31, 1966 insofar as permitted to do so by the applicable rules as modified by or pursuant to the Award of Arbitration Board No. 282, admit that Section 2 Seventh of the Railway Labor Act is accurately quoted in the second sentence of paragraph 22 of the Complaint, and otherwise deny the allegations in the second sentence of paragraph 22 of the Complaint.

23. Defendants admit and allege that plaintiff, on or about November 15, 1965, served on each of the defendants and upon certain other carriers a combination proposal, identified as Notices 1, 2 and 3; admit that the said combination proposal purported to consist of three separate notices pursuant to the provisions of Section 6 of the Railway Labor Act; deny that the said combination proposal in fact or in law constitutes three separate notices and deny that the said proposal was validly served pursuant to Section 6 of the Railway Labor Act; deny that the contents of the said combination proposal are adequately summarized in the first sentence of paragraph 23 of the Complaint; and refer the Court to the said combination proposal for its contents. Defendants admit that the second sentence of paragraph 23 of the Complaint states the position of the plaintiff, which position was similarly stated in a letter accompanying that portion of

the combination proposal identified as Notice 1, but deny that the plaintiff's position is valid.

24. Defendants admit that, on or about January 31, 1966, they and most, if not all, of the railroads listed in Exhibit A to the Complaint served upon representatives of the plaintiff a letter and attachment thereto, and that Exhibit E to the Complaint is typical of such letters and attachments. Defendants admit and allege that the proposal contained in Part A of the attachment to the letter properly assumes that the rules prescribed by the Award of Arbitration Board No. 282 continue to apply subsequent to March 30, 1966 until changed in a permissible manner including a voluntary agreement by the parties. Defendants admit and allege that the procedures of the Railway Labor Act for proposing changes in existing rates of pay, rules and working conditions and for negotiations and mediation over such proposed changes cannot validly be invoked with respect to proposed changes relating to the subject matter of the Award by Arbitration Board No. 282 prior to the expiration of that Award, but the parties may voluntarily agree upon such changes. Defendants admit and allege that the said letters and attachments set forth counterproposals to be considered in bargaining with plaintiff on a voluntary basis with respect to the proposals made by plaintiff in its combination proposal served on or about November 15, 1965 (see paragraph 23 above) and that the carriers, in serving such counterproposals, did not waive their contention that plaintiff's said combination proposal is premature and void insofar as it purports to constitute a notice under Section 6 of the Railway Labor Act, all as is more fully set out in Exhibit E to the Complaint. Except as admitted above, the allegations in the first three sentences of paragraph 24 of the Complaint are denied. Defendants deny that the aforesaid letters and attachments served on plaintiff are required to conform to the requirements of the Railway Labor Act, and deny that the said letters fail to conform to the re-

quirements of the Railway Labor Act as alleged in the fourth sentence of paragraph 24 of the Complaint if subject to the said Act. Defendants admit that the quotation from the said letters set forth in the fifth sentence of paragraph 24 of the Complaint is an accurate quotation insofar as it goes, but refer the Court to Exhibit E to the Complaint for the complete text of such letters.

25. Defendants admit that the allegations in paragraph 25 of the Complaint state the position of the plaintiff, but deny that that position is valid either for the reasons set forth in paragraphs 11 to 21 of the Complaint or for any other reasons.

26. Defendants admit that they and other railroads subject to the Award intend to operate diesel locomotives in road freight and yard service without firemen (helpers) on and after March 31, 1966 insofar as permitted to do so by the applicable rules as modified by or pursuant to the Award of Arbitration Board 282, and otherwise deny the allegations in paragraph 26 of the Complaint.

### *Second Defense*

27. The Complaint does not state a claim upon which relief can be granted.

WHEREFORE, defendants pray that the Complaint be dismissed and that defendants be allowed their costs and such other and further relief as may be appropriate in the premises.

### COUNTERCLAIM

Defendants hereby counterclaim for a declaratory judgment and injunctive relief against plaintiff, as follows:

28. This counterclaim arises under Public Law 88-108 (77 Stat. 132) and the Railway Labor Act (44 Stat. 577, as amended, 45 U.S.C. §§151-160). The jurisdiction of this Court is grounded upon 28 U.S.C. §§1331, 1337, 2201 and 2202. The matter in controversy exceeds, exclusive of

interests and costs, the sum or value of ten thousand dollars.

29. Each of the counterclaimants is a corporation which engaged in the transportation of freight and passengers by rail in interstate commerce. Each of the counterclaimants was a party to the proceedings before Arbitration Board No. 282 under Public Law 88-108 and is subject to the Award rendered by that Board.

30. The Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the "BLF&E"), the plaintiff in the Complaint filed in this proceeding and the defendant to this Counterclaim, is an unincorporated association and a labor organization which was a party to the proceedings before Arbitration Board No. 282 and is subject to the Award by that Board.

31. Certain employees of each of the counterclaimants are represented by the BLF&E with respect to certain matters to which Public Law 88-108, the Award by Arbitration Board No. 282 thereunder and the Railway Labor Act relate.

32. In addition to the BLF&E, the following labor organizations were parties to the proceedings before Arbitration Board No. 282 and are subject to the Award by that Board: the Brotherhood of Locomotive Engineers (hereinafter referred to as the "BLE"), the Brotherhood of Railroad Trainmen (hereinafter referred to as the "BRT"), the Switchmen's Union of North America (hereinafter referred to as the "SUNA") and the Order of Railway Conductors and Brakemen (hereinafter referred to as the "ORC&B").

33. In addition to the counterclaimants, most of the other railroads operating within the United States were parties to the proceedings before Arbitration Board No. 282 and are subject to the Award by that Board. Such railroads include, but are not necessarily limited to, those listed in Exhibit A hereto.

34. This Counterclaim is brought against the BLF&E by counterclaimants both individually and as representatives of a class which includes, but is not necessarily limited to, the railroads listed in Exhibit A hereto.

35. On or about November 2, 1959, each of the counterclaimants and most of the other railroads operating in the United States (including each of the carriers listed in Exhibit A hereto) served upon the BLF&E and the BLE written notices pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156) of proposed changes in certain existing agreements, rules, regulations, interpretations and/or practices affecting employees represented by either of those organizations. Among other things, the carriers proposed, in the portion of such notices identified as "Use of Firemen (Helpers) on Other than Steam Power" (a copy of which portion is attached as Exhibit B to the Complaint), to eliminate all agreements, rules, regulations, interpretations and practices, however established, which required the use of firemen (helpers) on other than steam-powered engines in freight or yard service, and to establish a rule which in general would leave such matters to managerial discretion, all as is more fully set forth in Exhibit B to the Complaint.

36. On or about November 2, 1959, each of the counterclaimants and most of the other railroads operating within the United States also served upon the BRT, the SUNA and/or the ORC&B written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156) of proposed changes in certain existing agreements, rules, regulations, interpretations and/or practices affecting employees represented by the organizations so notified. Among other things, the carriers proposed, in the portion of such notices identified as "Consist of Road and Yard Crews" (attached as Exhibit B hereto), to eliminate all agreements, rules, regulations, interpretations and practices which required the use of a stipulated number of trainmen or more than one conductor on crews in any class of

road service or which required the use of a stipulated number of brakemen or helpers or more than one conductor or foreman on crews in any class of yard, transfer or belt line services, and to establish a rule which in general would leave such matters to managerial discretion, all as is more fully set forth in Exhibit B hereto.

37. On or about September 7, 1960, the BLF&E, BLE, BRT, SUNA and/or ORC&B served upon each of the counterclaimants and most of the other railroads operating within the United States (including those listed in Exhibit A hereto) written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156) of a proposed agreement affecting employees represented by such organizations. Among other things, the said organizations proposed, in the portion of such notices and of the implementing proposals thereto identified as "Minimum Safe Crew Consist" (a copy of which portion is attached as Exhibit D to the Complaint), to establish rules which, in general, would require the use of not less than one conductor and two brakemen on crews in road service, not less than one conductor (foreman) and two brakemen (helpers) on crews in yard, belt line and transfer service, and not less than one engineer (motorman) and one fireman (helper) in all classes of engine service, all as is more fully set forth in Exhibit D to the Complaint.

38. Subsequent to the notices served under Section 6 of the Railway Labor Act (45 U.S.C. §156), described in paragraphs 36-37 above, the carriers and the organizations engaged in negotiations over the proposals made in such notices, both locally and on the national level, pursuant to the requirements of the Railway Labor Act. Among other things, a Presidential Railroad Commission was appointed by the President of the United States to investigate and report on the controversy and to use its best efforts, by mediation, to bring about a settlement. The report of the Presidential Railroad Commission, delivered to the President on February 28, 1962, recommended a basis for settle-



ment of the dispute which the carriers agreed to accept but which the organizations rejected. After further negotiations on a national level under the auspices of the Chairman of the National Mediation Board failed to result in an agreement, the National Mediation Board sought to induce the parties to submit their dispute to arbitration pursuant to Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§157, 158) as provided in Section 5 First (b) of the Act (45 U.S.C. §155 First (b)), which request was accepted by the carriers but rejected by the organizations.

39. In *Locomotive Engineers v. B. & O. R. Co.*, 372 U.S. 284 (1963), the Supreme Court held that the notices served by the carriers on November 2, 1959, described in paragraphs 36-37 above, were proper under the Railway Labor Act, and that the carriers were free to implement the proposals made in such notices as the procedures provided in the Railway Labor Act for considering such proposals had been exhausted upon the refusal by the organizations to agree to arbitration, subject only to the possible creation of an Emergency Board under Section 10 of the Railway Labor Act (45 U.S.C. §160). An Emergency Board was appointed by the President of the United States under Section 10 to investigate and report concerning such dispute. The report of the Emergency Board was submitted to the President on May 13, 1963 and recommended a basis for settlement of the dispute which the carriers agreed to accept but which the organizations rejected.

40. Section 10 of the Railway Labor Act (45 U.S.C. §160) provides, among other things, that:

"After the creation of such [emergency] board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."



Following the expiration of the thirty-day period after the report of the Emergency Board to the President on May 13, 1963, the carriers could validly implement their notices of November 2, 1959 and were no longer required to observe the existing agreements, rules, regulations, interpretations and practices which they proposed to terminate in such notices. On the other hand, the organizations and their members also could resort to self-help, including strikes, to prevent the implementation of the carriers' notices of November 2, 1959 and to coerce the carriers into adopting the proposals made in the organizations' notices of September 7, 1960.

41. During the thirty-day period following the report of the Emergency Board and for some time thereafter, further national negotiations ensued, some of which were conducted with the assistance of the Secretary of Labor. Among other things, the Secretary proposed that the "fireman (helper)" and "crew consist" issues raised by the portions of the notices attached as Exhibits B and D to the Complaint herein and as Exhibit B hereto to be submitted to binding arbitration under Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§157 and 158). That proposal was accepted by the carriers and accepted in principle by the organizations, but the organizations refused to agree with the carriers upon the terms of an arbitration agreement. All other efforts to settle the dispute having failed and a strike of the carriers by the organizations being imminent, the Congress enacted Public Law 88-108 (77 Stat. 132) on August 28, 1963.

42. Section 2 of Public Law 88-108 provided for the creation of a board of arbitration which subsequently became known as Arbitration Board No. 282. Section 3 provided for the submission to Arbitration Board No. 282 of those portions of the carriers' notices of November 2, 1959 and of the organizations' notices of September 7, 1960, which are attached as Exhibits B and D to the Com-

plaint herein and as Exhibit B hereto, and further provided that the Award by the Board of Arbitration "shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration." Section 4 provided that the arbitration should "be conducted pursuant to sections 7 and 8 of the Railway Labor Act," to the extent not inconsistent with Public Law 88-108, and that the "award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise." Section 6 provided that the parties should "immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration" under Section 3 of Public Law 88-108.

43. Section 1 of Public Law 88-108 provided:

"That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored."

In consequence, the obligation of the carriers to observe the agreements, rules, regulations, interpretations and practices which they proposed to terminate in their notices of November 2, 1959, which obligation had ended as alleged in paragraph 40 above, was reimposed subject to any

changes made therein by the arbitration award pursuant to Sections 3 and 4 of Public Law 88-108 or in any agreements reached by the parties in the further negotiations required by Section 6 of Public Law 88-108 or otherwise.

44. As is more fully alleged in paragraphs 45-47 below, the agreements, rules, regulations, interpretations and practices which the carriers proposed to terminate in their notices of November 2, 1959 were changed in part by the arbitration award made pursuant to Sections 3 and 4 of Public Law 88-108 and by agreements reached in the further negotiations pursuant to Section 6 of Public Law 88-108. Moreover, Section 8 provided that Public Law 88-108 should "expire one hundred and eighty days after the date of its enactment," or on February 24, 1964, "except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence." Hence, the obligation reimposed upon the carriers by Section 1 of Public Law 88-108 to observe the agreements, rules, regulations, interpretations and practices which the carriers proposed to terminate in their notices of November 2, 1959 no longer exists, except insofar as such agreements, rules, regulations, interpretations and practices may have been readopted pursuant to the Award by Arbitration Board No. 282 or pursuant to agreements between a carrier or carriers and an organization or organizations.

45. The issues raised by the carriers' notices of November 2, 1959 and by the organizations' notices of September 7, 1960 which were not submitted to arbitration and as to which the parties were required by Section 6 of Public Law 88-108 to resume collective bargaining were settled in a national agreement reached on June 25, 1964. Arbitration Board No. 282 filed its Award, pursuant to Public Law 88-108, on November 26, 1963. The validity of its Award was upheld in *Brotherhood of Loc. Fire. & Eng. v. Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (D. D.C., 1964), aff'd, 331 2d 1020 (D.C. Cir., 1964), cert. den., 377 U.S. 918 (1964).

In so doing, the Courts held, among other things, that the Award constituted a "complete and final disposition" of the issues raised by the portions of the carriers' notices of November 2, 1959 and of the organizations' notices of September 7, 1960 submitted to Arbitration Board No. 282. The said notices of November 2, 1959 and September 7, 1960 have been completely disposed of, therefore, and no longer have any effect.

46. Section II of the Award by Arbitration Board No. 282 relates to the "use of Firemen (Helpers) on other than Steam Power." Part A(1) of Section II provides that:

"All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award."

Part B of Section II established procedures for the discontinuance of up to 90 percent of the fireman (helper) positions in freight and yard service by the carriers subject to the Award, except as might be necessary to provide engine service employment to employees whose rights to such employment were retained in Parts C and D of Section II. Part C of Section II, in general, authorized the carriers to terminate the employment of firemen (helpers) hired two years or less prior to the effective date of the Award upon the payment to such firemen (helpers) of substantial separation allowances; authorized the carriers to offer a comparable job to firemen (helpers) having between two and ten years seniority as of the effective date of the Award, together with relocation expenses and guaranteed annual earnings for a period of not less than five years, and to terminate the employment of such firemen (helpers) who refused the offer of a comparable job upon payment of substantial separation allowances; and provided that firemen (helpers) having ten or more years seniority should continue to receive employment in engine service until retired, discharged for cause or otherwise

removed from the carrier's active working lists of firemen (helpers) by natural attrition. Part D of Section II set forth certain provisions concerning the rights to work of firemen (helpers) who remained on the active working lists of the carriers.

47. Pursuant to Section II of the Award by Arbitration Board No. 282, the carriers subject thereto have reduced the number of firemen (helpers) in their employment by approximately 18,000, and have paid separation allowances to firemen (helpers) separated from firemen employment pursuant to the Award in the aggregate amount of more than \$36,000,000.00. Approximately 1,200 firemen (helpers) accepted offers of comparable jobs, and have received such jobs together with relocation allowances and five-year guarantees of their annual earnings in accordance with the provisions of the Award.

48. The effective date of the Award by Arbitration Board No. 282 was January 25, 1964. Section IV of the Award provided that it "shall continue in force for two years from the date it takes effect, unless the parties agree otherwise." The carriers subject to the Award and the BLF&E entered into two agreements, copies of which are attached hereto as Exhibits C and D, which, among other things, continued the period in which the Award "shall continue in force" until March 30, 1966 as between the parties to the said agreements. A similar agreement was entered into by the carriers with the BLE. No agreement was made between the carriers and the BRT, SUNA or ORC&B extending the period in which the Award "shall continue in force" as between the carriers and those labor organizations, and the two-year period in which the Award "shall continue in force" as an award expired on January 25, 1966 with respect thereto. Litigation between many of the carriers and the BRT, SUNA and ORC&B concerning the effect of the expiration of the two-year period in which the Award "shall continue in force" is now pending in the United States District Court for the District of Columbia.

*The Akron & Barberton Belt Railroad Company, et al. v. Brotherhood of Railroad Trainmen, et al.*, Civil Action No. 142-66. (Opinion of the Court submitted on March 3, 1966).

49. As a result of the expiration of the Award by Arbitration Board No. 282 on March 30, 1966 as between the carriers subject to the Award and the BLF&E, the carriers, or any of them, and the BLF&E may after that date serve notices under Section 6 of the Railway Labor Act (45 U.S.C. §156) proposing changes in the agreements, rules, regulations, interpretations and practices established or continued by the Award and may progress such notices through the procedures required by the Railway Labor Act until an agreement is reached or until those procedures have been exhausted. Until such time as an agreement is reached or the procedures of the Railway Labor Act have been exhausted with respect to a lawful notice served pursuant to Section 6 of that Act after the expiration of the Award, however, the agreements, rules, regulations, interpretations and practices established or continued by the Award continue to govern the use of firemen (helpers) in freight service on other than steam power as required by the Railway Labor Act and Public Law 88-108. The rules and regulations which thus continue to apply include the terms, conditions, practices and procedures established by or pursuant to Section II of the Award by Arbitration Board No. 282, including the provisions therein for the protection of individual employees. The procedures of the Railway Labor Act may not be invoked prior to the expiration of the Award with respect to proposed changes in rules and regulations prescribed pursuant to the Award, and notices of such proposed changes purportedly served pursuant to Section 6 of the Railway Labor Act prior to the expiration of the Award (such as the notices referred to in paragraph 23 of the Complaint and in paragraph 23 herein) are premature, invalid and ineffective.

50. The position of the BLF&E is that the carriers subject to the Award must, as of 12:01 A.M on March 31, 1966, reinstate all of the agreements, rules, regulations, interpretations and practices which were in effect immediately prior to the effective date of the Award by Arbitration Board No. 282 and that the carriers accordingly must restore the more than 18,000 assignments which have been terminated pursuant to the Award and use firemen (helpers) on such assignments. For the reasons alleged in paragraphs 35-49 above, the position thus asserted by the BLF&E is contrary to the provisions of Public Law 88-108 and the Railway Labor Act and is invalid. The counterclaimants do not intend to accede to that position, therefore, and, upon information and belief, neither do the other carriers subject to the Award.

51. The counterclaimants are informed and believe that the BLF&E, unless restrained or enjoined by a court, will engage in strikes and work stoppages against counterclaimants and the other carriers subject to the Award, on or about March 31, 1966, for the purpose of coercing the counterclaimants and other carriers into reinstating the rules in effect prior to the Award by Arbitration Board No. 282 and of preventing the said carriers from continuing to apply the rules and procedures established and continued by Section II of that Award. Such strikes and work stoppages would be in violation of the Railway Labor Act and Public Law 88-108.

52. If not restrained or enjoined, the illegal strikes and work stoppages alleged in paragraph 51 above, and the threats thereof, would cause great and irreparable injuries to the counterclaimants, to the other carriers affected thereby, and to the public. They would paralyze the nation's rail transportation system, to the detriment of the national defense, including the support of our armed forces in Viet Nam. The carriers, including counterclaimants, would be



deprived of millions of dollars in operating revenues, would be unable to maintain their properties and to use their tracks, equipment and other physical properties in which they have substantial investments, would lose permanently to competing forms of transportation much business and revenue, and would be unable to fulfill their obligations under the Interstate Commerce Act. Many thousands of the employees of the carriers, including counterclaimants, would be deprived of their positions and earnings for the duration of the strike or longer. Such strikes and work stoppages would greatly interfere with the transportation in interstate commerce of passengers, mail, freight and express lading (including Government mail and express, military personnel and material), and food and other lading essential to the public health and safety.

WHEREFORE, the counterclaimants pray that this Court (1) adjudge and declare that the rules and procedures prescribed by or pursuant to the Award by Arbitration Board No. 282 continue to apply until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to valid notices served after the expiration of that Award under Section 6 of the Railway Labor Act proposing changes in such rules and procedures; (2) grant to the counterclaimants and to the carriers in the class represented by counterclaimants temporary and permanent injunctive relief restraining the BLF&E, its locals, officers, agents, employees, members and all persons acting in concert with them, from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages or from picketing the premises of counterclaimants or of the carriers in the class represented by counterclaimants in connection with the dispute or controversy alleged in this Counterclaim; and (3) grant to the counter-

claimants their costs and such other and further relief as may be necessary or proper in the premises.

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No. 66 C 320—Filed March 18, 1966—N.D. ILL. [Eastern Div.]  
Civil Action No. 784-66—Filed March 24, 1966

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Plaintiff,*

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, et al., *Defendants.*

**Memorandum and Order**

Defendants present under § 1404(a) (Title 28, U.S.C.A.) a motion to transfer this cause to the United States District Court for the District of Columbia.

Briefly summarized the instant action is one of the most recent renewals of the legal controversy relating to the long and obviously unresolved union—railroad carrier struggle over work-rules or more specifically the status of firemen.

The history of this controversy, not entirely new to me,

is reviewed in detail in the excellent briefs and the affidavits of the parties filed in this motion. A significant although relatively small part of that history is relevant to my consideration of the said motion.

After many years of unsuccessful labor negotiation, arbitration and extensive litigation, on August 28, 1963 Congress enacted Public Law 88-108 which created Arbitration Board No. 282. (77 Stat. 132, 45 U.S.C.A. § 157 (1965)) The work-rules dispute in its then existing posture was referred to Arbitration Board No. 282. Importantly, Congress, in the same Statute, also saw fit to direct that the Board's Award be filed with the United States District Court for the District of Columbia. The Award was so filed and judgment was entered thereon by Judge Alexander Holtzoff of that court. That court also heard and decided the constitutionality of the statute and the validity of the Award. *Brotherhood of Loc. Fire. & Eng. v. Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (D. D.C., 1964), *aff'd* 331 F. 2d 1020 (D.C. Cir., 1964), *cert. den.*, 377 U.S. 918 (1964).

In enacting Public Law 88-108 Congress specifically expressed its intention that the District Court for the District of Columbia take all necessary action and make interpretation rulings thereon. Although possibly this expressed preference is not mandatory it should be and is by me given a great deal of weight and consideration.

That court, through its able Judge Holtzoff, has lived with Public Law 88-108 since its inception. That Judge is in the best position to make the determinations necessary to a disposition of this case, determinations which necessarily and primarily concern interpretation of Public Law 88-108 and the resulting Award. Any resolution of the pending case must necessarily be determined by a legal construction of Public Law 88-108 and its resulting Award. Although, as plaintiff argues in support of its motion, the District of Columbia Court may not have exclusive jurisdiction over cases such as this, nevertheless, for purpose of deciding this § 1404(a) motion it is clear

that that suggested transferee court does possess a particular insight into the issues or to be even more specific the Statute and Award here involved.

A suit raising issues which for the most part are identical to those raised by the instant Complaint (the effect on the parties of the imminent two years time expiration of the Award) was filed in the District Court for the District of Columbia and therein assigned to Judge Holtzoff. Although there is much overlapping, I appreciate that the parties to the instant suit are not all identical with those in the District of Columbia action. For that matter plaintiff here is not party to the suit before Judge Holtzoff. Also, in the District of Columbia action, the position of the parties is in reverse, the carriers appearing as plaintiffs and not defendants. However, as already observed, the issue concerning the rights and status of the parties at the time the Award terminates is similar and is the crux of both cases.

A transfer of this case would lead to one uniform ruling in the district courts and serve to expedite a necessary final adjudication by one court of appeals and most probably eventually by the Supreme Court. The efficient administration of justice will be promoted in that duplication of work by attorneys and judges will be avoided thus precluding a waste of time, energy and money. *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 21, 26 (1960); *Van Dusen v. Barrack*, 376 U.S. 612, 616, 644 (1964).

The above considerations strongly indicate that the interests of justice would be best served by transferring this case. Inasmuch as the issues are entirely legal, convenience of witnesses does not enter into determination of this motion. Likewise, § 1404(a) concern for convenience of the parties plays a small part in deciding this motion. To the extent that it does relate, those who are presently engaged in both suits will find it more convenient to litigate only in one court.

As counsel herein well know, my practice in ruling on § 1404(a) motions has been to give strong weight to a

plaintiff's choice of forum, and only in those rare cases such as this where the interest of justice balance is strongly in favor of transfer would or will I grant such a motion (cf. *Gulf Oil Co. v. Gilbert*, 330 U.S. 501, 508, 509 (1947)) Also absent here is the aspect of a local interest or local controversy which would be a most convincing argument against granting the motion. Here, the controversy, far from being local is nationwide.

Finally, plaintiff argues that Judge Holtzoff in his recent opinion of March 3, 1966, has already indicated he will rule against their position. I find such an argument unavailing. Plaintiff's counsel, I am sure, will argue to Judge Holtzoff as they would otherwise have argued to me that either the March 3 ruling does not apply to them or that the ruling is in error. In any event they will have their day in court.

For the reasons stated above the motion of defendants to have the court transfer this cause to the United States District Court for the District of Columbia pursuant to the provisions of 28 U.S.C.A. § 1404(a) is granted. The Clerk is directed forthwith to transfer this cause accordingly.

March 18, 1966

WILLIAM J. CAMPBELL  
*Chief Judge*

Filed March 30, 1966

Civil Action No. 784-66

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Plaintiff,*

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, et al., *Defendants.*

**Plaintiff's Answer to Defendants' Counterclaim**

*First Defense*

The Counterclaim fails to state a cause of action.

*Second Defense*

The Counterclaim fails to state a claim upon which relief can be granted.

*Third Defense*

1. Plaintiff admits the allegations of Paragraphs 29-44, inclusive, and Paragraphs 45, 46 and 48 of the Counterclaim.

2. Plaintiff admits further that:

(a) The matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$10,000;

(b) Subsequent to the Award of Arbitration Board No. 282, the carriers subject thereto have reduced the number of firemen (helpers) in their employment by approximately 18,000.

3. Plaintiff denies that the allegations of Paragraph 50 adequately summarize its position and alleges that its position is more accurately and fully stated in Paragraphs 11-21 and 25 of the Complaint.

4. Plaintiff denies each and every allegation of the Counterclaim not expressly admitted by the foregoing paragraphs of this Answer.

WHEREFORE, plaintiff prays that the Counterclaim be dismissed, and that the plaintiff be allowed its costs and such other and further relief as the Court may deem appropriate in the premises.

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 Chicago, Illinois



Filed March 24, 1966

Civil Action No. 777-66

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

(Complaint For Declaratory Judgment and Injunctive  
Relief)

Bangor and Aroostook Railroad Company  
84 Harlow Street  
Bangor, Maine

The Akron & Barberton Belt Railroad Company  
55 Public Square  
Cleveland, Ohio

The Akron, Canton & Youngstown Railroad Company  
12 E. Exchange Street  
Akron, Ohio

Alton and Southern Railroad  
1000 S. 22nd Street  
East St. Louis, Illinois

Bauxite & Northern Railway Company  
1000 S. 22nd Street  
East St. Louis, Illinois

The Atchison, Topeka & Santa Fe Railway Company  
80 East Jackson Blvd.  
Chicago, Illinois

Atlanta & West Point Rail Road Company  
4 Hunter Street, S. E.  
Atlanta, Georgia

The Western Railway of Alabama  
4 Hunter Street, S. E.  
Atlanta, Georgia

Atlantic Coast Line Railroad Company  
500 Water Street  
Jacksonville, Florida

The Belt Railway Company of Chicago  
6900 So. Central Avenue  
Chicago, Illinois

- Boston & Maine Corporation  
150 Causeway Street  
Boston, Massachusetts
- Butte, Anaconda & Pacific Railway  
300 West Commercial Avenue  
Anaconda, Montana
- Buffalo Creek Railroad  
824 Ohio Street  
Buffalo, New York
- Bush Terminal Railroad Company  
107 48th Street  
Brooklyn, New York
- Camas Prairie Railroad Company  
King Street Station  
Seattle, Washington
- The Central Railroad Company of New Jersey  
Jersey Central Terminal  
Jersey City, New Jersey
- The New York & Long Branch Railroad Company  
Jersey Central Terminal  
Jersey City, New Jersey
- Lehigh & New England Railway Company  
Jersey Central Terminal  
Jersey City, New Jersey
- The Chesapeake & Ohio Railway Company  
Terminal Tower  
Cleveland, Ohio
- Chicago & Eastern Illinois Railroad Company  
332 South Michigan Avenue  
Chicago, Illinois
- Chicago & Illinois Midland Railway Company  
Illinois Building  
Springfield, Illinois
- Chicago and North Western Railway Company  
400 West Madison Street  
Chicago, Illinois

- Chicago & Western Indiana Railroad Company  
47 West Polk Street  
Chicago, Illinois
- Chicago, Burlington and Quincy Railroad Company  
547 W. Jackson Blvd.  
Chicago, Illinois
- Chicago, Great Western Railway Company  
700 Mulberry Street  
Kansas City, Missouri
- Chicago, Milwaukee, St. Paul & Pacific Railroad  
Company  
516 West Jackson Blvd.  
Chicago, Illinois
- Chicago, Rock Island & Pacific Railroad Company  
LaSalle Street Station  
Chicago, Illinois
- Hannibal Connecting Railroad  
Four Gateway Center  
Pittsburgh, Pennsylvania
- Chicago Short Line Railway Company  
9746 Avenue "N"  
Chicago, Illinois
- Oakland Terminal Railway  
526 Mission Street  
San Francisco, California
- Chicago, West Pullman & Southern Railroad Company  
2728 East 104th Street  
Chicago, Illinois
- The Cincinnati Union Terminal Company  
1301 Western Avenue  
Cincinnati, Ohio
- Clinchfield Railroad Company  
Nolichucky Avenue  
Erwin, Tennessee
- The Colorado and Southern Railway Company  
500 Johnson Building  
Denver, Colorado

- Davenport, Rock Island & North Western Railway  
Company  
547 W. Jackson Blvd.  
Chicago, Illinois
- The Denver & Rio Grande Western Railroad Company  
Rio Grande Building  
1531 Stout Street  
Denver, Colorado
- Des Moines Union Railway Company  
Union Station Building  
5th and Cherry Streets  
Des Moines, Iowa
- Detroit & Mackinac Railway Company  
120 Oak Street  
Tawas City, Michigan
- The Detroit & Toledo Shore Line Railroad Company  
131 W. Lafayette Avenue  
Detroit, Michigan
- Longview, Portland & Northern Railway Company  
465 Industrial Way  
Longview, Washington
- Duluth, Missabe & Iron Range Railway Company  
500 Wolvin Building  
Duluth, Minnesota
- Alameda Belt Line  
114 Sansome Street  
San Francisco, California
- Duluth, Winnipeg & Pacific Railway  
Winnipeg, Manitoba  
Canada
- East St. Louis Junction Railroad  
Live Stock Exchange Bldg.  
National Stock Yards, Illinois
- Elgin, Joliet and Eastern Railway Company  
208 South LaSalle Street  
Chicago, Illinois

- Fort Worth & Denver Railway Company  
Forth Worth Club Building  
Fort Worth, Texas
- Fort Worth Belt Railway Company  
210 N. 13th Street  
St. Louis, Missouri
- Galveston, Houston & Henderson Railroad Company  
325 33rd Street  
Galveston, Texas
- Galveston Wharves  
802 25th Street  
Galveston, Texas
- Strouds Creek & Muddlety Railroad  
2 North Charles Street  
Baltimore, Maryland
- Atlanta Joint Terminals  
4 Hunter Street, S. E.  
Atlanta, Georgia
- Great Northern Railway Company  
175 East 4th Street  
St. Paul, Minnesota
- Pacific Coast Railroad Company  
404 Union Street  
Seattle, Washington
- Green Bay & Western Railroad Company  
West Mason Street  
Green Bay, Wisconsin
- Gulf, Mobile & Ohio Railroad Company  
104 St. Francis Street  
Mobile, Alabama
- Houston Belt & Terminal Railway Company  
Union Station Building  
Houston, Texas
- Illinois Central Railroad Company  
135 East 11th Place  
Chicago, Illinois

- Illinois Northern Railway  
80 East Jackson Blvd.  
Chicago, Illinois
- Illinois Terminal Railroad Company  
710 North 12th Blvd.  
St. Louis, Missouri
- Indianapolis Union Railway Company  
202 Union Station  
Indianapolis, Indiana
- Greenwich & Johnsonville Railway  
The Plaza  
Albany, New York
- The Kansas City Southern Railway Company  
114 W. 11th Street  
Kansas City, Missouri
- Louisiana & Arkansas Railway Company  
114 W. 11th Street  
Kansas City, Missouri
- Kansas City Terminal Railway Company  
Union Station Building  
Kansas City, Missouri
- Kentucky & Indiana Terminal Railroad Company  
2910 North Western Parkway  
Louisville, Kentucky
- Kewaunee, Green Bay & Western Railroad Company  
West Mason Street  
Green Bay, Wisconsin
- Lake Superior & Ishpeming Railroad Company  
105 East Washington Street  
Marquette, Michigan
- The Lake Superior Terminal & Transfer Railway  
Company  
Union Depot  
Superior, Wisconsin
- Los Angeles Junction Railway  
4521 Produce Plaza  
Los Angeles, California

Louisville & Nashville Railroad Company

908 W. Broadway

Louisville, Kentucky

Maine Central Railroad Company

222-242 St. John Street

Portland, Maine

Portland Terminal Company

222-242 St. John Street

Portland, Maine

Manufacturers Railway Company

2927 So. Broadway

St. Louis, Missouri

Minneapolis, Northfield & Southern Railway

911 Hennepin Ave., So.

Minneapolis, Minnesota

Minnesota, Dakota & Western Railway Company

North Star Center, 7th & Marquette

Minneapolis, Minnesota

The Minnesota Transfer Railway

175 E. 4th Street

St. Paul, Minnesota

Missouri-Kansas-Texas Railroad Company

Katy Building

Dallas, Texas

Missouri Pacific Railroad Company

Missouri Pacific Bldg.

210 N. 13th Street

St. Louis, Missouri

New Orleans & Lower Coast Railroad Company

Missouri Pacific Bldg.

210 N. 13th Street

St. Louis, Missouri

Union Terminal Railway-St. Joseph Belt Railway

Missouri Pacific Bldg.

210 N. 13th Street

St. Louis, Missouri



- Joint Texas Division of Chicago, Rock Island &  
Pacific and Fort Worth and Denver  
Fort Worth Club Building  
Fort Worth, Texas
- Kansas, Oklahoma & Gulf Railway Company  
Missouri Pacific Bldg.  
210 N. 13th Street  
St. Louis, Missouri
- Midland Valley Railroad Company  
Missouri Pacific Bldg.  
210 N. 13th Street  
St. Louis, Missouri
- Missouri-Illinois Railroad Company  
Missouri Pacific Bldg.  
210 N. 13th Street  
St. Louis, Missouri
- The Monongahela Railway Company  
Pennsylvania Station  
Pittsburgh, Pennsylvania
- New Orleans Public Belt Railroad  
Public Belt Railroad Building  
546 Carondelet Street  
New Orleans, Louisiana
- New Orleans Union Passenger Terminal  
1001 Loyola Avenue  
New Orleans, Louisiana
- Lake Terminal Railroad Company  
Four Gateway Center  
Pittsburgh, Pennsylvania
- Norfolk and Portsmouth Belt Line Railroad Company  
Law Building, Granby Street  
Norfolk, Virginia
- Norfolk & Western Railway Company  
8 N. Jefferson Street  
Roanoke, Virginia
- Norfolk Southern Railway Company  
2424 North Boulevard

- Raleigh, North Carolina  
Northern Pacific Railway Company  
176 E. 5th Street  
St. Paul, Minnesota  
King Street Passenger Station  
King Street Passenger Station  
Seattle, Washington  
Northwestern Pacific Railroad Company  
65 Market Street  
San Francisco, California  
The Ogden Union Railway and Depot Company  
2501 Wall Avenue  
Ogden, Utah  
Oregon, California & Eastern Railway Company  
65 Market Street  
San Francisco, California  
Peoria and Pekin Union Railway Company  
101 Wesley Road  
Creve Coeur, Illinois  
The Pittsburgh & Shawmut Railroad Company  
Shawmut Building  
Kittanning, Pennsylvania  
Portland Terminal Railroad Company  
Union Station  
Portland, Oregon  
Port Terminal Railroad Association  
7298 Clinton Street  
Houston, Texas  
Reading Company  
Reading Terminal  
Philadelphia, Pennsylvania  
Alameda, Terminal and Northern Railroad Company  
Frisco Building  
906 Olive Street  
St. Louis, Missouri  
St. Joseph Terminal Railroad Company  
803 So. 4th Street  
St. Joseph, Missouri

- St. Louis-San Francisco Railway Company  
906 Olive Street  
St. Louis, Missouri
- St. Louis Southwestern Railway Company  
Cotton Belt Building  
1517 W. Front Street  
Tyler, Texas
- St. Paul Union Depot Company  
Union Depot  
St. Paul, Minnesota
- Ironton Railroad Company  
Reading Terminal  
Philadelphia, Pennsylvania
- Seaboard Air Line Railroad Company  
3600 W. Broad Street  
Richmond, Virginia
- Sioux City Terminal Railway Company  
Stockyards  
Sioux City, Iowa
- Soo Line Railroad Company  
Soo Line Building  
Minneapolis, Minnesota
- Southern Pacific Company  
65 Market Street  
San Francisco, California
- Southern Railway Company  
15th & K Streets, N.W.  
Washington, D. C.
- The Cincinnati, New Orleans & Texas Pacific Railway  
Company  
15th & K Streets, N.W.  
Washington, D. C.
- Harriman & Northeastern Railroad  
15th & K Streets, N.W.  
Washington, D. C.
- Alabama Great Southern Railroad Company  
15th & K Streets, N.W.  
Washington, D. C.

- New Orleans & Northeastern Railroad Company  
15th and K Streets, N.W.  
Washington, D. C.
- New Orleans Terminal Company  
15th & K Streets, N.W.  
Washington, D. C.
- Georgia Southern & Florida Railway Company  
15th and K Streets, N.W.  
Washington, D. C.
- St. Johns River Terminal Company  
15th and K Streets, N.W.  
Washington, D. C.
- Central of Georgia Railway Company  
301 West Broad Street  
Savannah, Georgia
- Spokane International Railroad Company  
1416 Dodge Street  
Omaha, Nebraska
- Spokane, Portland & Seattle Railway Company  
American Bank Building  
Portland, Oregon
- Oregon Trunk Railway Company  
American Bank Building  
Portland, Oregon
- Oregon Electric Railway  
American Bank Building  
Portland, Oregon
- Tennessee Central Railway Company  
158 First Avenue, South  
Nashville, Tennessee
- Texas City Terminal Railway Company  
Texas City, Texas
- Terminal Railroad Association of St. Louis  
Union Station  
St. Louis, Missouri

Canadian Pacific Railway (Lines in Maine and Vermont)

Windsor Station  
Montreal, Quebec  
Canada

The Texas & Pacific Railway Company

Fidelity Union Tower  
Dallas, Texas

McKeesport Connecting Railroad Company

Four Gateway Center  
Pittsburgh, Pennsylvania

Newburgh and South Shore Railroad Company

Four Gateway Center  
Pittsburgh, Pennsylvania

Texas-New Mexico Railway Company

Fidelity Union Tower  
Dallas, Texas

The Texas Mexican Railway Company

Convent & Moctezumn Streets  
Laredo, Texas

Toledo, Peoria & Western Railroad Company

2000 E. Washington Street  
East Peoria, Illinois

Union Freight (Boston)

South Station  
Boston, Massachusetts

Birmingham Southern Railroad Company

4600 Commerce Avenue  
Fairfield, Alabama

Lakefront Dock & Terminal Company

2 North Charles Street  
Baltimore, Maryland

Toledo Terminal Railroad Company

1214 Cherry Street  
Terminal Building  
Toledo, Ohio

- Union Pacific Railroad  
1416 Dodge Street  
Omaha, Nebraska
- Union Railway Company  
210 Union Station Building  
Memphis, Tennessee
- Union Terminal Company  
Union Station  
Dallas, Texas
- The Washington Terminal Company  
Union Station  
Washington, D.C.
- Western Maryland Railway Company  
300 St. Paul Place  
Baltimore, Maryland
- The Western Pacific Railroad Company  
526 Mission Street  
San Francisco, California
- Wichita Terminal Association  
Santa Fe Office Building  
Topeka, Kansas
- Winston-Salem Southbound Railway Company  
308 S. Liberty Street  
Winston-Salem, North Carolina
- Mississippi Export Railroad Company  
310 McInnis Avenue  
Moss Point, Mississippi
- Ann Arbor Railroad Company  
Schaefer Building  
13530 Michigan Avenue  
Dearborn, Michigan
- The Baltimore & Ohio Railroad Company  
Baltimore & Ohio Building  
2 North Charles Street  
Baltimore, Maryland
- The Baltimore & Ohio Chicago Terminal Railroad Company  
Grand Central Station  
Chicago, Illinois

- The Staten Island Rapid Transit Railway Company  
Baltimore & Ohio Building  
2 North Charles Street  
Baltimore, Maryland
- Curtis Bay Railroad Company  
Baltimore & Ohio Building  
2 North Charles Street  
Baltimore, Maryland
- Bessemer and Lake Erie Railroad Company  
Four Gateway Center  
Pittsburgh, Pennsylvania
- Canadian National Railways (Great Lakes Region & St.  
Lawrence Region)  
935 de la Gauchetiere Street West  
Montreal, Quebec, Canada
- Central Vermont Railway, Inc.  
Federal Street  
St. Albans, Vermont
- The Delaware and Hudson Railroad Corporation  
Delaware and Hudson Railroad Building  
Albany, New York
- Detroit, Toledo and Ironton Railroad Company  
Schaefer Building  
13530 Michigan Avenue  
Dearborn, Michigan
- Erie Lackawanna Railroad  
Midland Building  
Cleveland, Ohio
- Grand Trunk Western Railroad Company  
131 West Lafayette  
Detroit, Michigan
- The Lehigh and Hudson River Railway Company  
River Street  
Warwick, New York
- Lehigh Valley Railroad Company  
425 Brighton Street  
Bethlehem, Pennsylvania



- Long Island Rail Road Company  
Jamaica Station Building  
Jamaica, New York
- Monon Railroad  
332 South Michigan Avenue  
Chicago, Illinois
- Montour Railroad Company  
Pittsburgh & Lake Erie Terminal Building  
Pittsburgh, Pennsylvania
- New York Central System  
466 Lexington Avenue  
New York, New York
- The New York Central Railroad Company  
466 Lexington Avenue  
New York, New York
- Indiana Harbor Belt Railroad  
466 Lexington Avenue  
New York, New York
- Chicago River & Indiana Railroad Company  
466 Lexington Avenue  
New York, New York
- Pittsburgh & Lake Erie Railroad  
466 Lexington Avenue  
New York, New York
- Lake Erie & Eastern Railroad  
466 Lexington Avenue  
New York, New York
- The Cleveland Union Terminals Company  
466 Lexington Avenue  
New York, New York
- Northampton and Bath Railroad  
Four Gateway Center  
Pittsburgh, Pennsylvania
- The New York, New Haven and Hartford Railroad  
Company  
54 Meadow Street  
New Haven, Connecticut

New York, Susquehanna and Western Railroad Company  
 1501 Broadway  
 New York, New York

The Pennsylvania Railroad Company  
 6 Penn Center Plaza  
 Philadelphia, Pennsylvania

Baltimore and Eastern Railroad Company  
 6 Penn Center Plaza  
 Philadelphia, Pennsylvania

Pennsylvania-Reading Seashore Lines  
 22 Federal Street  
 Camden, New Jersey

Pittsburgh, Chartiers & Youghioghenny Railway  
 Pittsburgh & Lake Erie Terminal Building  
 Pittsburgh, Pennsylvania

Youngstown & Northern Railroad Company  
 Four Gateway Center  
 Pittsburgh, Pennsylvania

Carolina and Northwestern Railway Company  
 15th and K Streets, N.W.  
 Washington, D.C.

Interstate Railroad  
 Andover, Virginia

Savannah & Atlanta Railway Company  
 Louisiana Road and Stiles Avenue  
 Savannah, Georgia, *Plaintiffs*,

v.

Brotherhood of Locomotive Firemen and Enginemen  
 400 First Street, N.W.  
 Washington, D.C., *Defendant*.

**Complaint For Declaratory Judgment and Injunctive  
 Relief**

1. This is an action arising under Public Law 88-108, 77 Stat. 132 (1963), and under the Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. §§ 151-160. The jurisdiction of this Court is grounded upon 28 U.S.C. §§ 1331, 1337, 2201,

and 2202. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of ten thousand dollars.

2. Each of the plaintiffs named in the caption to this complaint is either a corporation or unincorporated association which engages in the transportation of freight or passengers or both by rail in interstate commerce. Each of the plaintiffs was a party to the proceedings before Arbitration Board No. 282 under Public Law 88-108 pursuant to which an Award was rendered and filed in this Court in Misc. No. 41-63, or has otherwise been affected by the said Award.

3. Defendant Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the "BLF&E") is an unincorporated association and a labor organization which was a party to the proceedings before Arbitration Board No. 282 and is subject to the Award by that Board.

4. Certain employees of each of the plaintiffs are represented by the BLF&E with respect to certain matters to which Public Law 88-108, the Award by Arbitration Board No. 282 thereunder, and the Railway Labor Act relate.

5. In addition to the BLF&E, the following labor organizations were parties to the proceedings before Arbitration Board No. 282 and are subject to the Award by that Board: the Brotherhood of Locomotive Engineers (hereinafter referred to as the "BLE"), the Brotherhood of Railroad Trainmen (hereinafter referred to as the "BRT"), the Switchmen's Union of North America (hereinafter referred to as the "SUNA"), and the Order of Railway Conductors and Brakemen (hereinafter referred to as the "ORC&B").

6. On or about November 2, 1959, most of the plaintiffs served upon the BLF&E and the BLE written notices pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156) of proposed changes in certain existing agreements,

rules, regulations, interpretations, and/or practices affecting employees represented by either of those organizations. Among other things, the carriers proposed, in the portion of such notices identified as "Use of Firemen (Helpers) on Other than Steam Power" (attached as Exhibit A hereto), to eliminate all agreements, rules, regulations, interpretations, and practices, however established, which required the use of firemen (helpers) on other than steam-powered engines in freight or yard service, and to establish a rule which in general would leave such matters to managerial discretion, all as is more fully set forth in Exhibit A hereto.

7. On or about November 2, 1959, most of the plaintiffs also served upon the BRT, the SUNA, and/or the ORC&B written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156) of proposed changes in certain existing agreements, rules, regulations, interpretations, and/or practices affecting employees represented by the organizations so notified. Among other things, the carriers proposed, in the portion of such notices identified as "Consist of Road and Yard Crews" (attached as Exhibit B hereto), to eliminate all agreements, rules, regulations, interpretations, and practices which required the use of a stipulated number of trainmen or more than one conductor on crews in any class of road service or which required the use of a stipulated number of brakemen or helpers or more than one conductor or foreman on crews in any class of yard, transfer, or belt line services, and to establish a rule which in general would leave such matters to managerial discretion, all as is more fully set forth in Exhibit B hereto.

8. On or about September 7, 1960, the BLF&E, BLE, BRT, SUNA, and/or ORC&B served upon most of the plaintiffs written notice pursuant to Section 6 of the Railway Labor Act (45 U.S.C. §156) of a proposed agreement affecting employees represented by such organizations. Among other things, the said organizations proposed, in

the portion of such notices and of the implementing proposals thereto identified as "Minimum Safe Crew Consist" (attached hereto as Exhibit C), to establish rules which, in general, would require the use of not less than one conductor and two brakemen on crews in road service, not less than one conductor (foreman) and two brakemen (helpers) on crews in yard, belt line, and transfer service, and not less than one engineer (motorman) and one fireman (helper) in all classes of engine service, all as is more fully set forth in Exhibit C hereto.

9. Subsequent to the notices served under Section 6 of the Railway Labor Act (45 U.S.C. §156), described in Paragraphs 7, 8, and 9 above, the carriers and the organizations engaged in negotiations over the proposals made in such notices, both locally and on a national level, pursuant to the requirements of the Railway Labor Act. Among other things, a Presidential Railroad Commission was appointed by the President of the United States to investigate and report on the controversy and to use its best efforts, by mediation, to bring about a settlement. The report of the Presidential Railroad Commission, delivered to the President on February 28, 1962, recommended a basis for settlement of the dispute which the carriers agreed to accept but which the organizations rejected. After further negotiations on a national level under the auspices of the Chairman of the National Mediation Board failed to result in an agreement, the National Mediation Board sought to induce the parties to submit their dispute to arbitration pursuant to Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§157, 158) as provided in Section 5 First (b) of that Act (45 U.S.C. §155 First (b)), which request was accepted by the carriers but rejected by the organizations.

10. In *Brotherhood of Locomotive Engineers v. Baltimore & O. R.R.*, 372 U.S. 284 (1963), the Supreme Court held that the notices served by the carriers on November 2, 1959, described in Paragraphs 7 and 8 above, were

proper under the Railway Labor Act and that the carriers were free to implement the proposals made in such notices inasmuch as the procedures provided in the Railway Labor Act for considering such proposals had been exhausted upon the refusal by the organizations to agree to arbitration, subject only to the possible creation of an Emergency Board under Section 10 of the Railway Labor Act (45 U.S.C. §160). An Emergency Board was appointed by the President of the United States under Section 10 to investigate and report concerning such dispute. The report of the Emergency Board was submitted to the President on May 13, 1963 and recommended a basis for settlement of the dispute which the carriers agreed to accept but which the organizations rejected.

11. Section 10 of the Railway Labor Act (45 U.S.C. §160) provides, among other things, that:

"After the creation of such [emergency] board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

Following the expiration of the thirty-day period after the report of the Emergency Board to the President on May 13, 1963, the carriers could validly implement their notices of November 2, 1959 and were no longer required to observe the existing agreements, rules, regulations, interpretations, and practices which they proposed to terminate in such notices. On the other hand, the organizations and their members also could resort to self-help, including strikes, to prevent the implementation of the carriers' notices of November 2, 1959 and to coerce the carriers into adopting the proposals made in the organizations' notices of September 7, 1960.

12. During the thirty-day period following the report of the Emergency Board and for some time thereafter,

further national negotiations ensued, some of which were conducted with the assistance of the Secretary of Labor. Among other things, the Secretary proposed that the "fireman (helper)" and "crew consist" issues raised by the portions of the notices attached hereto as Exhibits A, B, and C be submitted to binding arbitration under Sections 7 and 8 of the Railway Labor Act (45 U.S.C. §§157, 158). That proposal was accepted by the carriers and accepted in principle by the organizations, but the organizations refused to agree with the carriers upon the terms of an arbitration agreement. All other efforts to settle the dispute having failed, and a strike of the carriers by the organizations being imminent, the Congress on August 28, 1963 enacted Public Law 88-108 (77 Stat. 132).

13. Section 2 of Public Law 88-108 provided for the creation of a board of arbitration which subsequently became known as Arbitration Board No. 282. Section 3 provided for the submission to Arbitration Board No. 282 of those portions of the carriers' notices of November 2, 1959 and of the organizations' notices of September 7, 1960 which are attached hereto as Exhibits A, B, and C, and further provided that the Award by the Board of Arbitration "shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration." Section 4 provided that the arbitration should "be conducted pursuant to sections 7 and 8 of the Railway Labor Act," to the extent not inconsistent with Public Law 88-108, and that the "award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise." Section 6 provided that the parties should "immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration" under Section 3 of Public Law 88-108.



14. Section 1 of Public Law 88-108 provided:

"That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored."

In consequence, the obligation of the carriers to observe the agreements, rules, regulations, interpretations, and practices which they proposed to terminate in their notices of November 2, 1959, which obligation had ended as alleged in Paragraph 12 above, was reimposed subject to any changes made therein by the arbitration award pursuant to Sections 3 and 4 of Public Law 88-108 or in any agreements reached by the parties in the further negotiations required by Section 6 of Public Law 88-108 or otherwise.

15. As is more fully alleged in Paragraphs 17, 18, and 19 below, the agreements, rules, regulations, interpretations, and practices which the carriers proposed to terminate in their notices of November 2, 1959 were changed in part by the arbitration award made pursuant to Sections 3 and 4 of Public Law 88-108 and by agreements reached in the further negotiations pursuant to Section 6 of Public Law 88-108. Moreover, Section 8 provided that Public Law 88-108 should "expire one hundred and eighty days after the date of its enactment," or on February 24, 1964, "except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence." Hence, the obligation reimposed upon the carriers by Section 1 of Public Law 88-108 to observe the agree-

ments, rules, regulations, interpretations, and practices which the carriers proposed to terminate in their notices of November 2, 1959 no longer exists, except insofar as such agreements, rules, regulations, interpretations, and practices may have been readopted pursuant to the Award by Arbitration Board No. 282 or pursuant to agreements between a carrier or carriers and an organization or organizations.

16. The issues raised by the carriers' notices of November 2, 1959 and by the organizations' notices of September 7, 1960 which were not submitted to arbitration and as to which the parties were required by Section 6 of Public Law 88-108 to resume collective bargaining were settled in a national agreement reached on June 25, 1964. Arbitration Board No. 282 filed its Award, pursuant to Public Law 88-108, on November 26, 1963. The validity of its Award was upheld by this Court in *Brotherhood of Locomotive F. & E. v. Chicago B. & Q. R.R.*, 225 F. Supp. 11 (D. D.C.), *aff'd.*, 331 F.2d 1020 (D.C. Cir.), *cert. den.*, 377 U.S. 918 (1964). In so doing, the Court held, among other things, that the Award constituted a "complete and final disposition" of the issues raised by the portions of the carriers' notices of November 2, 1959 and of the organizations' notices of September 7, 1960 submitted to Arbitration Board No. 282. The said notices of November 2, 1959 and September 7, 1960 have been completely disposed of, therefore, and no longer have any effect.

17. Section II of the Award by Arbitration Board No. 282 relates to the "use of Firemen (Helpers) on other than Steam Power." Part A(1) of Section II provides that:

"All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award."

Part B of Section II authorized the discontinuance of up to ninety percent of the fireman (helper) positions in freight and yard service by the carriers subject to the Award, except as might be necessary to provide engine service employment to employees whose rights to such employment were retained in Parts C and D of Section II. Part C of Section II, in general, authorized the carriers to terminate the employment of firemen (helpers) hired two years or less prior to the effective date of the Award upon the payment to such firemen (helpers) of substantial separation allowances; authorized the carriers to offer a comparable job to firemen (helpers) having between two and ten years seniority as of the effective date of the Award, together with relocation expenses and guaranteed annual earnings for a period of not less than five years, and to terminate the employment of such firemen (helpers) who refused the offer of a comparable job upon payment of substantial separation allowances; and provided that firemen (helpers) having ten or more years seniority should continue to receive employment in engine service until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition. Part D of Section II set forth certain provisions concerning the rights to work of firemen (helpers) who remained on the active working lists of the carriers.

18. Pursuant to Section II of the Award by Arbitration Board No. 282, the carriers subject thereto have reduced the number of firemen (helpers) in their employment by approximately 18,000, and have paid separation allowances to firemen (helpers) separated from fireman employment pursuant to the Award in the aggregate amount of more than \$36,000,000.00. Approximately 1,200 firemen (helpers) have accepted offers of comparable jobs, and have received such jobs together with relocation allowances and five-year guarantees of their annual earnings in accordance with the provisions of the Award.

19. The effective date of the Award by Arbitration Board No. 282 was January 25, 1964. Section IV of the Award provided that it "shall continue in force for two years from the date it takes effect, unless the parties agree otherwise." The carriers subject to the Award and the BLF&E entered into two agreements which, among other things, continued the period in which the Award "shall continue in force" through March 30, 1966 as between the parties to the said agreements. A similar agreement was entered into by the carriers with the BLE. No agreement was made between the carriers and the BRT, SUNA, or ORC&B extending the period in which the Award "shall continue in force" as between the carriers and those labor organizations, and the two-year period in which the Award "shall continue in force" as an award expired on January 25, 1966 with respect thereto. Litigation between many of the carriers and the BRT, SUNA, and ORC&B concerning the effect of the expiration of the two-year period in which the Award "shall continue in force" is now pending in this Court in *The Akron & Barberton Belt Railroad Co. Et Al. v. Brotherhood of Railroad Trainmen Et Al.*, Civil Action No. 142-66.

20. As a result of the expiration of the Award by Arbitration Board No. 282 on March 30, 1966 as between the carriers subject to the Award and the BLF&E, the carriers, or any of them, and the BLF&E may after that date serve notices under Section 6 of the Railway Labor Act (45 U.S.C. § 156) proposing changes in the agreements, rules, regulations, interpretations, and practices established or continued by the Award and may progress such notices through the procedures required by the Railway Labor Act until an agreement is reached or until those procedures have been exhausted. Until such time as an agreement is reached or the procedures of the Railway Labor Act have been exhausted with respect to a lawful notice served pursuant to Section 6 of that Act after the expiration of the Award, however, the agreements, rules, regulations,

interpretations, and practices established or continued by the Award continue to govern the use of firemen (helpers) in freight service on other than steam power as required by the Railway Labor Act and Public Law 88-108. The rules and regulations which thus continue to apply include the terms, conditions, practices, and procedures established by or pursuant to Section II of the Award by Arbitration Board No. 282, including the provisions therein for the protection of individual employees. The procedures of the Railway Labor Act may not be invoked prior to the expiration of the Award rendered by Arbitration Board No. 282 with respect to proposed changes in rules and regulations prescribed pursuant to the Award, and notices of such proposed changes purportedly served pursuant to Section 6 of the Railway Labor Act prior to the expiration of the Award are premature, invalid, and ineffective.

21. The BLF&E takes the position that plaintiffs must, as of 12:01 A.M. on March 31, 1966, reinstate all the agreements, rules, regulations, interpretations, and practices which were in effect immediately prior to the effective date of the Award by Arbitration Board No. 282 and that plaintiffs accordingly must restore the more than 18,000 assignments which have been terminated pursuant to the Award and use firemen (helpers) on such assignments. The BLF&E also takes the position that the procedures of the Railway Labor Act may be invoked during the period in which the Award "shall continue in force" as an award with respect to proposed changes in rules governing the use of firemen (helpers) and, on or about November 15, 1965, served most of, if not all, the plaintiffs with notice of proposed changes in such rules purportedly pursuant to Section 6 of the Railway Labor Act. For the reasons alleged in Paragraphs 7-21 above, the positions thus asserted by the BLF&E are contrary to the provisions of Public Law 88-108 and the Railway Labor Act and are invalid; and plaintiffs do not intend to accede thereto. An actual controversy therefore exists between plaintiffs

and defendant as to the rules, regulations, interpretations, and practices which will be in effect as of March 31, 1966 and thereafter.

22. Plaintiffs are informed and believe that the BLF&E, unless restrained or enjoined by a court, will engage in strikes and work stoppages against plaintiffs on or about March 31, 1966, for the purpose of coercing plaintiffs into reinstating the rules in effect prior to the Award by Arbitration Board No. 282 and of preventing plaintiffs from continuing to apply the rules and procedures established and continued by Section II of that Award. Such strikes and work stoppages would be in violation of the Railway Labor Act and Public Law 88-108.

23. If not restrained or enjoined, the illegal strikes and work stoppages alleged in Paragraph 23 above, and the threats thereof, would cause great and irreparable injuries to plaintiffs and to the public. They would paralyze the nation's rail transportation system, to the detriment of the national defense, including the support of our armed forces in Viet Nam. Plaintiffs would be deprived of millions of dollars in operating revenues, would be unable to maintain their properties and to use their tracks, equipment, and other physical properties in which they have substantial investments, would lose permanently to competing forms of transportation much business and revenue, and would be unable to fulfill their obligations under the Interstate Commerce Act. Many thousands of the employees of plaintiffs would be deprived of their positions and earnings for the duration of the strike or longer. Such strikes and work stoppages would greatly interfere with the transportation in interstate commerce of passengers, mail, freight and express lading (including Government mail and express, military personnel, and material), and food and other lading essential to the public health and safety.

WHEREFORE, plaintiffs pray that this Court (1) adjudge and declare that the rules and procedures pre-

scribed by or pursuant to the Award by Arbitration Board No. 282 continue to apply until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to valid notices served after the expiration of that Award under Section 6 of the Railway Labor Act proposing changes in such rules and procedures; (2) grant to plaintiffs temporary and permanent injunctive relief restraining the BLF&E, its locals, officers, agents, employees, members, and all persons acting in concert with them, from authorizing, calling, encouraging, permitting, or engaging in any strikes or work stoppages or from picketing the premises of plaintiffs in connection with the dispute or controversy alleged in this complaint; and (3) grant to plaintiffs their costs and such other and further relief as may be necessary or proper in the premises.

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#### EXHIBIT A

##### USE OF FIREMEN (HELPERS) ON OTHER THAN STEAM POWER

- A. Eliminate all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of train, engine or yard service employees, which require the employment or use of firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous and unclassified services) or in any class of yard service (including all transfer, belt line and miscellaneous services to which mileage rates do not apply).



B. Establish a rule to provide that

1. Management shall have the unrestricted right, under all circumstances, to determine when and if a fireman (helper) shall be used on other than steam power in all classes of freight service (including all mixed, miscellaneous and unclassified services) and in all classes of yard service (including all transfer, belt line and miscellaneous services to which mileage rates do not apply).

2. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of paragraph 1 of this rule shall be eliminated.

EXHIBIT B

CONSIST OF ROAD AND YARD CREWS

A. Eliminate all agreements, rules, regulations and practices, however established, applicable to any class or grade of train, engine or yard service employees, which require the employment or use of

(i) a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen or flagmen) or more than one conductor in any crew used in any class of road service, including all miscellaneous and unclassified services,

(ii) A stipulated number of brakemen or helpers or more than one conductor or foreman in any crew used in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates do not apply, or

(iii) a conductor or trainman in connection with the movement of light engines or in



pusher or helper service, or an engineer, conductor or trainman in pilot service.

- B. Establish a rule to provide that
1. Management shall have the unrestricted right, under any and all circumstances, to determine when and if trainmen (assistant conductors, ticket collectors, baggagemen, brakemen and flagmen) shall be used in each crew employed in all classes of road service, including all miscellaneous and unclassified services, and if used the number and classification of employees who will be so used; and when and if brakemen or helpers shall be used in each crew employed (including yardmen who work independent of a yard crew) in all classes of yard, transfer and belt line service, including all miscellaneous services to which mileage rates do not apply, and if used, the number and classification of employees who will be so used.
  2. Management shall also have the unrestricted right, under all circumstances, to determine when and if more than one conductor shall be used in any crew employed in any class of road service, including all miscellaneous and unclassified services; and when and if more than one conductor or foreman shall be used in any crew employed in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates do not apply; and when and if a conductor, trainman or yardman will be used in connection with the movement of light engines and in helper and pusher service, and when and if an engineer, conductor, trainman or yardman will be used in pilot service.
  3. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of this rule shall be eliminated.

# EXHIBIT C

## MINIMUM SAFE CREW CONSIST

Establish rules or agreements to provide:

- A. Crews in all classes of road train service shall consist of not less than one (1) conductor and two (2) trainmen and such additional employees as are required to assure maximum safety.
- B. Train and yard crews in yard, belt line and transfer service, shall consist of not less than one (1) conductor (foreman) and two (2) brakemen (helpers) and such additional employees as are required to assure maximum safety.
- C. Crews in all classes of engine service shall consist of not less than one (1) engineer (motorman) and one (1) fireman (helper) and such additional employees as are required to assure maximum safety.

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Civil Action No. 777-66

Filed April 13, 1966

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

#### **Defendant's Answer to Complaint and Counterclaim for Declaratory Judgment and Injunctive Relief**

##### *First Defense*

The complaint fails to state a claim upon which relief can be granted.

##### *Second Defense*

This Court is without jurisdiction to grant injunction relief under the provisions of the Norris-LaGuardia Act (29 U.S.C. §101 *et seq.*).

*Third Defense*

1. Defendant admits the allegations of paragraphs 3 to 14, inclusive, 16, and 19 except for the final sentence thereof, of the Complaint.

2. Defendant admits that the matter in controversy exceeds, exclusive of interest and costs, the sum or value of ten thousand dollars, and that subsequent to the Award of Arbitration Board 282 the carriers subject thereto have reduced the number of firemen (helpers) in their employment by approximately 18,000.

3. Defendant denies that plaintiffs Winston-Salem Southbound Railway Company, Mississippi Export Railroad Company, and Interstate Railroad, are parties to the proceedings before Arbitration Board 282 or otherwise have been affected by that Award. The allegations of paragraph 2 of the Complaint are otherwise admitted.

4. Defendant denies that the allegations of paragraph 21 of the Complaint adequately summarize its position; that its position is more fully and accurately stated in the counterclaim.

5. Defendant denies each and every allegation of the Complaint not expressly admitted by the foregoing paragraphs of this Answer.

WHEREFORE, defendant prays that the Complaint be dismissed and that defendant be allowed its costs and such other and further relief as may be appropriate in the premises.

**COUNTERCLAIM**

Defendant hereby counterclaims for a declaratory judgment and injunctive relief against plaintiff's as follows:

1. This action arises under the Railway Labor Act (44 Stat. 577, as amended, 45 U.S.C. §§151-160), hereinafter referred to as "the Act." The jurisdiction of this Court

is grounded upon 28 U.S.C. §§1331, 1337, 2201 and 2202. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of ten thousand dollars.

2. The defendant is an unincorporated association and a labor organization that engages in collective bargaining in the railroad industry. The headquarters and principal office of the defendant is 15401 Detroit Road, Lakewood, Ohio.

3. The membership of the defendant consists of locomotive firemen, locomotive engineers, hostlers and hostler helpers employed by railroads engaged in the transportation of freight and passenger by rail in interstate commerce and including the railroads, plaintiffs in this action.

4. The defendant is the duly authorized and accredited representative for the purposes of the Act of the foregoing crafts or classes of employees, and has been recognized as such for many years by such railroads.

5. The plaintiffs are each engaged in interstate commerce, are each a "carrier" as defined under Section 1 of the Act and are each subject to the provisions of the Act.

6. On or about June 30th, 1947, defendant, acting as collective bargaining representative of locomotive firemen, hostlers and hostler helpers employed on most of the railroads of the country, served certain proposals regarding the employment of firemen, hostlers and hostler helpers on said railroads, pursuant to Section 6 of the Act. On or about the same date certain counterproposals were served by said railroads on the defendant pursuant to Section 6 of the Act. Negotiations between the parties followed but they were unable to arrive at an agreement, and an Emergency Board was appointed by the President of the United States, pursuant to Section 10 of the Act to investigate the dispute between the parties and to report to the President.

7. The Emergency Board submitted its report, together with its Findings and Recommendations, to the President of the United States on September 19, 1949, and thereafter the parties settled their dispute by entering into a certain Mediation Agreement (Case A-3391), dated May 17, 1950, hereinafter referred to as the "National Diesel Agreement." Most of the plaintiff railroads, parties to the instant suit, were parties to the Mediation Agreement.

8. Section 4 of said Agreement reads as follows:

*"Section 4—A fireman, or a helper, taken from the seniority ranks of the firemen, shall be employed on all locomotives;"* (with exceptions not relevant to the instant suit.)

9. Those of plaintiff railroads who were not parties to the National Diesel Agreement, within a relatively short time thereafter, entered into agreements of a character substantially identical to that set forth in the preceding paragraphs of this Counterclaim.

10. Each of the plaintiffs was also party to a Schedule collectively bargained with defendant which set forth various terms and conditions of employment, including protection of seniority rights and other rules protecting such rights of the employees involved and represented by defendant as bidding for positions and bidding on the extra board, which are hereinafter referred to as "protective provisions."

11. On November 2, 1959, each of the plaintiff railroads served upon the defendant written notice pursuant to Section 6 of the Act of proposed changes in certain existing agreements, rules, regulations, interpretations and/or practices affecting employees represented by defendant. Among other matters, the railroads proposed, in the portion of such notices identified as "Use of Firemen (Helpers) on other than Steam Power" (attached as Exhibit A to Complaint), to eliminate all agreements, rules, regulations, in-

terpretations and practices, however established, which required the use of firemen (helpers) on other than steam powered engines in freight or yard service, and to establish a rule which in general would leave such matters to managerial discretion, all as is more fully set forth in Exhibit A to the Complaint.

12. On or about September 7, 1960, the defendant served upon the plaintiff railroads, written notice pursuant to Section 6 of the Act of a proposed agreement affecting the employees represented by the defendant. Implementing proposals were later served by the defendant. The relevant portion thereof is identified as "Minimum Safe Crew Consist," and is attached as Exhibit C to the Complaint.

13. Notices similar to those served by the defendant were served at the same time by the Brotherhood of Locomotive Engineers, The Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America, the other labor organizations in the railroad industry representing for collective bargaining purposes the crafts and classes of employees, including locomotive firemen, engineers, conductors, trainmen, brakemen, switchmen and other employees known as "operating employees" employed by the plaintiff railroads.

14. Following the serving of the notices described in paragraphs 10 and 11 and unsuccessful efforts to negotiate on a national level, a special presidential study commission was appointed. This Commission made its report to the President on February 28th, 1962 with recommendations. Following a judicial determination (*Locomotive Engineers v. B. & O. R. Co.*, 372 U.S. 284 (1963)) that there was no legal barrier to the carriers initiating the rule changes contained in their notices of November 2nd, 1959, and following the continued inability of the parties to negotiate an agreement, the National Mediation Board recommended that the case be submitted to binding arbitration. Dis-

agreement continued and an Emergency Board was established pursuant to Section 10 of the Act. The report of this Board, Emergency Board 154, was submitted to the President on May 13, 1963 with recommendations.

15. National negotiations ensued during the 30 day period following the date of the report of Emergency Board 154 and for some time thereafter and were carried on with the assistance of the Secretary of Labor. The Secretary of Labor in a memorandum to the parties dated July 5, 1963 suggested accepting the report and recommendations of Emergency Board 154 as a basis for the establishment of a joint rule to be in effect for two years and initiated meetings with the parties to consider these suggestions.

No agreement having been reached, on July 22, 1963, President John F. Kennedy delivered a message to Congress relative to the disputes and as a part of such message submitted a proposed joint resolution to provide for the settlement of such disputes, known as House Joint Resolution 565 and Senate Joint Resolution 102. Section 4 of such Joint Resolution read as follows:

"Sec. 4. The Commission shall act upon any application filed with it under Section 1 of this joint resolution, by way of approval, modified approval, or disapproval; and upon such approval or modified approval an interim rule consistent therewith shall be put into effect and shall remain operative until the parties reach agreement regarding the matter involved or, if no agreement is reached, for 2 years following the date the interim rule goes into effect."

The Commission referred to in Section 4 is the Interstate Commerce Commission. The resolution contemplated that the Interstate Commerce Commission would make determinations as to interim rules which would be binding upon the parties for two years from the date the interim rule went into effect.



16. Following the introduction of the resolutions and while hearings were being held on the Resolutions in the House and in the Senate, the Secretary of Labor continued his efforts to mediate the dispute. On August 2nd, 1963, he made a proposal to the parties for an interim agreement for a period of two or three years. Although some progress was made by the Secretary of Labor in narrowing the issues in dispute, his mediatory efforts came to a conclusion with the enactment by Congress, after hearings held on the Resolutions, of Public Law 88-108 (77 Stat. 132, 45 U.S.C.A. § 157 (1965 Pocket Parts)), hereinafter referred to as "the Law."

17. Under Section 1 of the Law, both the carriers and the organizations were prohibited from making any changes in rates of pay, rules and working conditions, pursuant to the notices above set forth of November 2, 1959 (Exhibit A to the Complaint) and September 7, 1960 (Exhibit C to the Complaint), except by agreement or pursuant to an arbitration award made in accordance with the Law and were prohibited from engaging in any strike or lockout over any dispute arising from such notices.

Under Section 2 of the Law a Board of Arbitration was created. Under Section 3, the Secretary of Labor was required to submit to the Board and the parties in dispute a copy of his statement of August 2, 1963 and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request. The Board was required to make a decision as to what disposition should be made of the portions of the carriers' notices of November 2, 1959 and the organizations' notices of September 7, 1960. Section 3 further provided that the award "shall be binding upon both the carriers and organizations parties to this dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the Board of Arbitration."



18. Section 4 of the Law in the last sentence provides:

"The Award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise."

19. Under date of November 26, 1963 the Arbitration Board created under the Law, known as Arbitration Board 282, rendered its Award. The relevant portions of that Award are as follows:

#### "I. DISPOSITION OF SECTION 6 NOTICES.

"Those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other Than Steam Power' and 'Consist of Road and Yard Crews' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals pertaining thereto are denied, except to the extent hereinafter provided.

#### "Section II, Part A, SAVING CLAUSE.

"A(1) All agreements, rules, regulations, interpretations and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award.

• • • • •

#### "IV. DURATION.

This award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise."

Relevant also to the issues in this case is the following portion of the opinion of the neutral members.

"The Board's award will remain in force only two years. Within that time the effect of attrition may

be such that the number of firemen or train crew jobs actually eliminated may be comparatively small. Problems that are as deeply rooted and that have been as long in development as those here involved, however, cannot be solved overnight. In this case, rapid readjustment could have a human price too great to pay. If, through this award, principles are established and procedures set in motion which contribute to a final solution, our hopes as neutral members of this Board will have been fulfilled." (Opinion p. 5)

20. Following a holding of the courts (*BLF&E v. Chicago B. & Q. R. Co.*, 225 F. Supp. 11 (1964), aff'd, 331 F.2d 1020 (D.C. Cir., 1964), cert. den., 377 U.S. 918 (1964)) that the Award was valid, an agreement was reached between the defendant and the plaintiff carriers, by which the terms of the Award were continued in force through March 30, 1966.

21. Pursuant to the provisions of the Law, the Award made a complete and final disposition of the carriers' notices of November 2, 1959 and the organizations' notices of September 7, 1960. By virtue of the provisions of Section 1 of the Law, rates of pay, rules and working conditions in effect at the time of the enactment of the Law continue unchanged except by agreement or pursuant to the Award. The agreements in effect at the time of the enactment of the Law with relation to the manning of diesel locomotives were the National Diesel Agreement and agreements of an identical character, referred to in paragraphs 7 and 9 of this Counterclaim; and with relation to other terms and conditions of employment were the Schedules including the protective provisions, referred to in paragraph 10 of this Counterclaim. No agreement having been reached by the parties to change these agreements upon the expiration of the Award on March 30, 1966, these agreements were in force and became effective on and after March 31, 1966.

22. It is the position of the plaintiff railroads that all of the terms, conditions, practices and procedures established pursuant to the Award are incorporated in the collective agreements and continue in effect unless and until changed in accordance with the Act after the Award expired. Prior to the expiration of the Award the plaintiff railroads made their intent clear that upon the expiration of the Award they would repudiate the National Diesel Agreement and the agreements referred to in paragraphs of a substantially identical character, which agreements are referred to above in paragraphs 7, 9 and 10 of this Counterclaim; and that beginning on March 31, 1966, plaintiff railroads would be—and they have been—operating diesel locomotives in road freight and yard service without firemen (helpers) in violation of such agreements, in violation of the Law and also of the Act, particularly Section 2, Seventh thereof, which reads as follows:

“Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act.”

23. On or about November 15, 1965, defendant served on each of plaintiff railroads a notice pursuant to Section 6 of the Act, identified as Notice No. 1, seeking to change the collective bargaining agreement covering the employment of firemen (helpers) on other than steam power. A copy of said notice is attached hereto as Exhibit A. This notice makes clear that the position of the organization that upon the expiration of the Award, the National Diesel Agreement and similar agreements with respect to employment of firemen (helpers) are in full force and effect and that on and after 12:01 A.M. on March 31, 1966, the railroads served will be expected to comply fully with such agreements unless and until another agreement has been reached. Defendant also duly served other notices

providing certain relief and remedies to employees terminated or otherwise abused during the effectiveness of the Award and seeking to negotiate an apprenticeship agreement. Plaintiffs have taken the position that Notice No. 1 was premature and have objected also to the other notices.

24. For the reasons set forth above, it is the position of the defendant that under the terms of the Law and the Award issued thereunder, the Award came to an end at 12:01 A.M. on March 31, 1966 and that all of its terms and conditions had no force and effect after March 30, 1966. Beginning at 12:01 A.M. on March 31, 1966, the collective agreements with relation to manning of diesel locomotives in road freight and yard service which were in effect at the time of the enactment of the Law, and specifically the National Diesel Agreement and agreements of a substantially identical character, and including the Schedules and protective provisions, to the extent to which they were temporarily superseded by the Award, again became fully effective.

25. The repudiation by the plaintiffs of the agreements referred to in the preceding paragraph hereof, and the violation by plaintiffs of those agreements have caused great and irreparable injuries to the employees of the plaintiff railroads represented by the defendant for collective bargaining purposes under the Act; as set forth in the Affidavit of J. L. Shattuck, Vice President of defendant, captioned for Civil Action No. 784-66 which is now consolidated with the instant action by order of this Court, and which is attached hereto and incorporated herein.

26. If not restrained or enjoined by this Court, plaintiffs will continue to violate their collective agreements with the defendant in violation of the Act by intentionally and deliberately operating freight and passenger trains and switching locomotives, or requiring such trains and

locomotives to be operated, without a locomotive fireman or helper, taken from the seniority ranks of the firemen's craft, being a part of the crew of said trains or locomotives, assigning employees from other crafts to take the place and perform the services of the fireman or helper in the crews of said trains or locomotives, severing from their employ employees in the class or craft of firemen-helpers, thereby depriving them and their families of their livelihood and valuable seniority rights earned in years of devotion and attachment to the railroad industry, and otherwise imposing great and incalculable hardship on their employees represented by defendant.

WHEREFORE, defendant prays that this Court:

I. Adjudge and Declare that pursuant to the provisions of Public Law 88-108 and the Award of Arbitration Board 282, the Award of Arbitration Board 282 had no force and effect after 12:01 A.M., March 31, 1966, and as of that time the plaintiff railroads were bound by the Railway Labor Act to observe the terms and conditions of the Mediation Agreement dated May 17, 1950, and the other agreements referred to in paragraphs 7, 9 and 10 of this Counterclaim;

II. Adjudge and Declare that Notice No. 1 (Exhibit A) and other notices served by defendant on or about November 15, 1965 are valid and comply with the Railway Labor Act;

III. Grant defendant preliminary, pending trial, and permanent injunctive relief, restraining each and all the plaintiffs, their officers and agents, from violating the provisions of the Mediation Agreement dated May 17, 1950, and the other agreements referred to in paragraphs 7, 9 and 10 of this Counterclaim;

IV. Grant defendant and the employees represented by defendant damages for violation of the provisions of the Mediation Agreement of May 17, 1950 and the other agree-

ments referred to in paragraphs 7, 9, and 10 of this Counterclaim; and

V. Grant defendant costs, and such other and further relief that may be necessary and proper in the circumstances.

JOSEPH L. RAUH, JR.  
1625 K Street, Northwest  
Washington, D.C. 20006

ISAAC N. GRONER  
1730 K Street, Northwest  
Washington, D.C. 20006

*Attorneys for Defendant*

Of Counsel:

HAROLD C. HEISS  
Keith Building  
Cleveland, Ohio

ALEX ELSON  
11 South LaSalle Street  
Chicago, Illinois

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Filed May 3, 1966

Civil Action No. 777-66

IN THE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**Plaintiffs' Reply to Defendant's Counterclaim**

Plaintiffs reply to the Counterclaim filed by defendant as follows:

*First Defense*

1. Plaintiffs admit that the matter in controversy exceeds the sum or value of \$10,000 as alleged in Paragraph 1 of

the Counterclaim. The remaining allegations in that Paragraph constitute conclusions of law not requiring a reply.

2. Plaintiffs admit the allegations in Paragraph 2 of the Counterclaim.

3. Plaintiffs admit that the membership of defendant includes certain locomotive firemen, locomotive engineers, hostlers and/or hostler helpers employed by plaintiffs engaged in the transportation of freight and passengers by rail in interstate commerce, but otherwise deny the allegations in Paragraph 3 of the Counterclaim.

4. Plaintiffs admit that defendant is the duly authorized and accredited bargaining representative under the Railway Labor Act of certain locomotive firemen, hostlers, and/or hostler helpers employed by plaintiffs, and admit that defendant has been so recognized for a number of years, varying as among the particular plaintiffs, but otherwise deny the allegations of Paragraph 4 of the Counterclaim.

5. Plaintiffs admit the allegations of Paragraph 5 of the Counterclaim.

6. Plaintiffs admit the allegations of Paragraph 6 of the Counterclaim.

7. Plaintiffs admit the allegations of Paragraph 7 of the Counterclaim.

8. Plaintiffs admit that the partial quotation of Section 4 of the National Diesel Agreement is accurate insofar as it goes, refer the Court to that Agreement for the complete text of Section 4 and of the other provisions of the Agreement, but otherwise deny the allegations in Paragraph 8 of the Counterclaim.

9. Plaintiffs admit and allege that most, if not all, the plaintiffs who were not parties to the National Diesel Agreement subsequently entered into agreements with defendant which contained provisions similar to the portion of Section 4 of the said National Diesel Agreement set

forth in Paragraph 8 of the Counterclaim, but otherwise deny the allegations of Paragraph 9 of the Counterclaim.

10. Plaintiffs admit and allege that most, if not all, the plaintiffs at various times entered into agreements with defendant establishing rules (sometimes referred to as "schedules" or "schedule rules") governing certain terms and conditions of employment; that although the provisions of such agreements varied to an extent as among the particular plaintiffs, they generally included, among other things, rules governing the establishment, exercise, and protection of seniority rights and rules governing the operation and adjustment of extra boards; but plaintiffs otherwise deny the allegations of Paragraph 10 of the Counterclaim.

11. Plaintiffs admit and allege that on or about November 2, 1959 most of the plaintiffs served upon defendant the notices referred to in the first sentence of Paragraph 11 of the Counterclaim, but otherwise deny the allegations of that sentence. Plaintiffs admit the remaining allegations of Paragraph 11 of the Counterclaim.

12. Plaintiffs admit and allege that on or about September 7, 1960 most of the plaintiffs were served by defendant with the notices referred to in the first sentence of Paragraph 12 of the Counterclaim; that the implementing proposals referred to in the second sentence of Paragraph 12 of the Counterclaim were later served upon most of the plaintiffs by defendant; and that a portion of said implementing proposals is identified as "Minimum Safe Crew Consist" and attached as Exhibit C to the Complaint. Otherwise the allegations of Paragraph 12 of the Counterclaim are denied.

13. Plaintiffs admit the allegations of Paragraph 13 of the Counterclaim.

14. Plaintiffs admit and allege that national negotiations following service of the notices described in Paragraphs 11,



12, and 13 of the Counterclaim did not succeed in reaching an agreement; that a special presidential commission (the Presidential Railroad Commission) was appointed by the President of the United States; that the Commission made its report to the President on February 28, 1963 with recommendations for settlement of the dispute; and that those recommendations were accepted by plaintiffs and the other railroads concerned but were rejected by defendant and the other labor organizations concerned. Plaintiffs further admit and allege that the Supreme Court, in *Brotherhood of Locomotive Engineers v. Baltimore & O. R.R.*, 372 U.S. 284 (1963), held that the notices served by plaintiffs and other railroads on November 2, 1959 were proper under the Railway Labor Act and that the said railroads were free to initiate the rules changes proposed in those notices, inasmuch as the procedures provided in the Railway Labor Act for considering such proposals had been exhausted following the refusal of defendant and the other labor organizations to accept a recommendation by the National Mediation Board that the dispute be submitted to binding arbitration, subject only to the possible creation of an Emergency Board under Section 10 of the Railway Labor Act (45 U.S.C. § 160). Plaintiffs further admit and allege that disagreement continued; that an Emergency Board (No. 154) was established by the President pursuant to Section 10 of the Railway Labor Act; that the report of Emergency Board 154 was submitted to the President on May 13, 1963 with recommendations for settlement of the dispute; that the recommendations of Emergency Board 154 were accepted by plaintiffs and the other railroads concerned but were rejected by defendant and the other labor organizations concerned; and that plaintiffs and such other railroads were free to implement the rules changes proposed in their notices of November 2, 1959 thirty days after the submission of the report by Emergency Board 154 to the President. The allegations in Paragraph 14 of the Counterclaim otherwise are denied.

15. Plaintiffs admit and allege that national negotiations ensued during the thirty-day period following the date of the report of Emergency Board 154 and for some time thereafter and that such negotiations, on and after June 4, 1963, were carried on with the assistance of the Secretary of Labor, among others, but otherwise deny the allegations in the first sentence of Paragraph 15 of the Counterclaim. Plaintiffs further admit and allege that the Secretary of Labor submitted a memorandum to the parties, dated July 5, 1963, in which he made recommendations for settlement of the dispute which were accepted by plaintiffs and the other railroads concerned but rejected by defendant and the other labor organizations concerned, but plaintiffs deny that the purported summary in the second sentence of Paragraph 15 of the Counterclaim of the recommendations or suggestions made by the Secretary of Labor is complete or accurate and refer the Court to the memorandum by the Secretary of Labor for such recommendations or suggestions. Plaintiffs admit the allegations in the third, fourth, and fifth sentences of Paragraph 15 of the Counterclaim. Plaintiffs deny that the allegations in the sixth sentence of Paragraph 15 of the Counterclaim constitute a complete and accurate summary of the Joint Resolution submitted to the Congress by the President and refer the Court to that Joint Resolution for its contents.

16. Plaintiffs admit the allegations in the first sentence of Paragraph 16 of the Counterclaim. Plaintiffs further admit that the Secretary of Labor on August 2, 1963 made a proposal to the parties for settlement of the dispute, but deny that the allegations in the second sentence of Paragraph 16 of the Counterclaim constitute a complete and accurate summary of the contents of that proposal and refer the Court to the Statement of the Secretary of Labor for the contents of his proposal. Plaintiffs admit and allege that in negotiations by the parties upon the suggestions made by the Secretary of Labor tentative agreements were reached with respect to portions of such suggestions; that

the plaintiffs and the other railroads concerned accepted and the defendant and other labor organizations concerned accepted with certain reservations the Secretary of Labor's suggestion that the fireman (helper) and crew consist issues be resolved by binding arbitration but that the parties were unable to agree upon the terms and procedures of an arbitration agreement; that thereafter the Secretary of Labor concluded his mediatory efforts; and that Public Law 88-108 (77 Stat. 132) was subsequently enacted by the Congress, which statute differed substantially from the Joint Resolution submitted to the Congress by the President. Plaintiffs otherwise deny the allegations in the last sentence of Paragraph 16 of the Counterclaim.

17. Plaintiffs deny that the allegations in Paragraph 17 of the Counterclaim constitute a complete and accurate summary of Public Law 88-108 and refer the Court to that statute for its contents.

18. Plaintiffs admit that the last sentence of Section 4 of Public Law 88-108 is accurately quoted in Paragraph 18 of the Counterclaim.

19. Plaintiffs admit the allegations in the first sentence of Paragraph 19 of the Counterclaim. Plaintiffs admit the accuracy of the quotations in Paragraph 19 of the Counterclaim from the Award by Arbitration Board No. 282 and from the Opinion of the Neutral Members, but deny that the portions thus quoted are the only relevant portions of the said Award and Opinion and refer the Court to that Award and Opinion for their complete contents.

20. Plaintiffs admit and allege that the validity of the Award by Arbitration Board No. 282 was upheld and that petitions to impeach that Award, filed by defendant herein and by other labor organizations in the United States District Court for the District of Columbia pursuant to Section 9 of the Railway Labor Act and Section 4 of Public Law 88-108, were dismissed in *Brotherhood of Loco-*

*motive Fire. & Eng. v. Chicago, B. & Q. R. R.*, 225 F. Supp. 11 (D. D.C.), *aff'd*, 331 F. 2d 1020 (D.C. Cir.), *cert. den.*, 377 U.S. 918 (1964). Plaintiffs further admit and allege that the carriers parties to that proceeding, including plaintiffs herein, and defendant herein entered into agreements providing, among other things, that the carriers would not take any action under Section II of the Award by Arbitration Board No. 282 until ten days after the Supreme Court acted upon the petition for writ of *certiorari* filed in the aforesaid proceeding (with certain exceptions) and that "the period of time during which the provisions of Section II of the Award shall continue in force shall be one year, eleven months, and three days following the grant or denial of *certiorari* by the Supreme Court of the United States." Plaintiffs further admit and allege that *certiorari* was denied in the aforesaid proceeding on April 27, 1964, and that "one year, eleven months, and three days" thereafter continued through March 30, 1966. The allegations in Paragraph 20 of the Counterclaim otherwise are denied.

21. Plaintiffs admit and allege that Section 3 of Public Law 88-108 provided, among other things, that the Award by Arbitration Board No. 282 "shall be binding on both the carriers and organizations parties to the dispute and shall constitute a complete and final disposition" of "those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other than Steam Power' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals thereto." Plaintiffs further admit and allege that the Award by Arbitration Board No. 282 did constitute a complete and final disposition of the portions of the notices so specified, including those portions set forth in Exhibits A, B, and C to the Complaint. Plaintiffs otherwise deny the allegations in the first sentence of Paragraph 21 of the Counterclaim. Plaintiffs deny that the allegations in the second sentence of Para-

graph 21 of the Counterclaim constitute a complete and accurate summary of the provisions of Section 1 of Public Law 88-108, and refer the Court to said Section 1 for its contents. Plaintiffs admit and allege that to the extent the National Diesel Agreement, any other agreements of an identical character, or "schedules" were being applied at the time of the enactment of Public Law 88-108 by plaintiffs or by other carriers who served the notices of November 2, 1959, such was being done voluntarily rather than by any requirement of the said agreements or "schedules" or of the Railway Labor Act; and plaintiffs otherwise deny the allegations in the third sentence of Paragraph 21 of the Counterclaim. Plaintiffs deny the allegations in the fourth sentence of Paragraph 21 of the Counterclaim.

22. Plaintiffs deny that the first sentence in Paragraph 22 of the Counterclaim adequately summarizes the position of plaintiffs and allege that their position is more fully and accurately summarized in Paragraph 20 of the Complaint which is incorporated herein by reference. Plaintiffs admit that they and other railroads subject to the Award intend to operate and have operated diesel locomotives in road freight and yard service without firemen (helpers) on and after March 31, 1966 insofar as permitted to do so by the applicable rules as modified by or pursuant to the Award of Arbitration Board No. 282; admit that Section 2 Seventh of the Railway Labor Act is accurately quoted in the second sentence of Paragraph 22 of the Counterclaim; but otherwise deny the allegations in the second sentence of Paragraph 22 of the Counterclaim.

23. Plaintiffs admit and allege that defendant, on or about November 15, 1965, served on most, if not all, the plaintiffs a combination proposal, identified as Notices 1, 2, and 3; admit and allege that the said combination proposal purported to consist of three separate notices pursuant to the provisions of Section 6 of the Railway Labor Act; deny that the said combination proposal in fact or in law constitutes three separate notices; deny that the said

proposal was validly served pursuant to Section 6 of the Railway Labor Act; deny that the contents of the said combination proposal are adequately summarized in Paragraph 23 of the Counterclaim; and refer the Court to the said combination proposal for its contents. Plaintiffs admit that the third sentence of Paragraph 23 of the Counterclaim states the position of the defendant, but deny that the defendant's position is valid.

24. Plaintiffs admit that the allegations in Paragraph 24 of the Counterclaim state the position of the defendant, but deny that that position is valid either for the reasons set forth in the Counterclaim or for any other reasons.

25. Plaintiffs deny the allegations of Paragraph 25 of the Counterclaim, except that they admit that Civil Action No. 784-66 has been consolidated with the instant action by order of court.

26. Plaintiffs admit and allege that they and other railroads subject to the Award intend to operate and have operated locomotives in road freight and yard service without firemen (helpers) on and after March 31, 1966 insofar as permitted to do so by the applicable rules as modified by or pursuant to the Award of Arbitration Board No. 282, but otherwise deny the allegations in Paragraph 26 of the Counterclaim.

### *Second Defense*

27. The Counterclaim fails to state a claim upon which relief can be granted.

### *Third Defense*

28. With respect to the request for damages contained in Paragraph IV of the Prayer of the Counterclaim, plaintiffs, while asserting and alleging that the Counterclaim fails to state a claim upon which such relief can be granted, further assert and allege that such claims for damages, if any, must be prosecuted through the procedures prescribed

by the agreements between defendant and particular plaintiffs for the prosecution of individual claims and grievances; that appeals from denials by particular plaintiffs of such claims, if any, lie within the exclusive jurisdiction of the National Railroad Adjustment Board under Section 3 of the Railway Labor Act (45 U.S.C. §153); and that therefore this Court lacks jurisdiction to grant the relief prayed.

WHEREFORE, plaintiffs pray that the Counterclaim be dismissed and that plaintiffs be allowed their costs and such other and further relief as may be appropriate.

Dated: May 3, 1966

Of Counsel:

Shea and Gardner  
734 Fifteenth Street, N.W.  
Washington, D. C.

/s/ FRANCIS M. SHEA  
Shea and Gardner  
734 Fifteenth Street, N.W.  
Washington, D. C.  
Attorney for Plaintiffs

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Filed April 4, 1966

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 777-66

BANGOR AND AROOSTOOK RAILROAD COMPANY, ET AL.,  
*Plaintiffs,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Defendant.*

Civil Action No. 784-66

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Plaintiff,*

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,  
ET AL., *Defendants.*

**Order of Consolidation**

Upon consideration of the motion of the carrier parties for an order consolidating the two above-entitled actions and upon consideration of the memoranda and arguments of counsel in connection therewith, it appearing that the two actions involve common questions of law or fact and that there is good cause therefor, it is hereby

ORDERED, that the two above-entitled actions are hereby consolidated for all further proceedings.

Dated: April 4, 1966.

ALEXANDER HOLTZOFF,  
*United States District Judge.*



Filed March 28, 1966

Civil Action No. 777-66

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA**Temporary Restraining Order**

This matter came on to be heard upon the Motion by Plaintiffs for Temporary Restraining Order, supported by an Affidavit by James E. Wolfe, from which it appears that defendant Brotherhood of Locomotive Firemen & Enginemen may be threatening to engage in strikes or work stoppages against plaintiffs and that such strikes and work stoppages will cause immediate and irreparable, injury, loss, and damages before notice can be served and a hearing had on the Motion by Plaintiffs for Preliminary Injunction, in that said plaintiffs which constitute most of the nation's Class I railroads, if the strikes and work stoppages are not restrained, will be forced to suspend the transportation of passengers and freight, with the consequences that plaintiffs will be deprived of many millions of dollars in revenues for each day the strike continues, many of their employees will be deprived of their employment and wages for the duration of the strike, many businesses will be deprived of essential transportation services, and railroad transportation in the United States may be paralyzed so as to seriously impede or interrupt altogether the transportation of passengers, mail, freight and express lading, the products of industry, food, medicine, and other lading essential to the public health, safety, and welfare, including the transportation of military personnel and defense materials and supplies essential to the national defense and to the support of the military effort in Viet Nam.

IT IS THEREFORE ORDERED that defendant Brotherhood of Locomotive Firemen & Enginemen, and each of the lodges, divisions, locals, officers, agents, employees, and members of, and all persons acting in concert with them, be, and they hereby are temporarily restrained from authorizing, call-

ing, encouraging, permitting, or engaging in any strikes or work stoppages and from picketing the premises of any of the plaintiffs over any dispute as to the agreements, rules, regulations, interpretations, or practices to be applied by plaintiffs or any of them upon the expiration of the period during which the Award by Arbitration Board No. 282 shall continue in force as an award; and it is further

ORDERED that this temporary restraining order is granted on the condition that a bond in the sum of \$10,000 be filed to make good such damages not to exceed said sum as may be suffered or sustained by any party who is found to be wrongfully enjoined or restrained; and it is further

ORDERED that defendant be and is hereby directed to show cause before this Court at 10 o'clock on April 4, 1966 at Constitution Avenue and John Marshall Place, N.W., Washington, D. C., why the Motion by Plaintiffs for Preliminary Injunction should not be granted; and it is further

ORDERED that this temporary restraining order shall expire on April 5th, 1966, at 4 P.M. unless it is further extended by order of this Court; and it is further

ORDERED that this order may be served by any person over the age of twenty-one years, not a party to this proceeding, selected for the purpose by plaintiffs or any of them.

Dated: March 28, 1966  
11 A.M.

ALEXANDER HOLTZOFF,  
*United States District Judge.*

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Filed March 31, 1966

Civil Action No. 777-66

IN THE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**Supplement To Temporary Restraining Order**

Whereas this Court on March 28, 1966 entered an order temporarily restraining the Brotherhood of Locomotive Firemen and Enginemen, and each of the lodges, divisions, locals, officers, agents, employees and members of, and all persons acting in concert with them, from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of any of certain designated carriers by railroad over any dispute as to the agreements, rules, regulations, interpretations or practices to be applied by plaintiffs or any of them upon the expiration of the period during which the Award by Arbitration Board No. 282 shall continue in force as an award; and

Whereas the Court has been advised that the Court of Appeals for the District of Columbia Circuit has denied a motion for stay of the said restraining order and dismissed the appeal taken by the defendant from the said order of this Court; and

Whereas affidavits filed this date show that strikes have taken place on the properties of the following railroads and possibly on others and that premises of said railroads are being picketed by members of the defendant:

Texas and Pacific Railway Company  
Boston and Maine Corporation  
Central of Georgia Railway Company  
Grand Trunk Western Railroad  
Illinois Central Railroad Company  
Missouri Pacific Railroad Company

New Orleans Union Passenger Terminal  
Pennsylvania Railroad Company  
Portland Terminal Company  
Seaboard Air Line Railroad Company  
Spokane International Railroad Company  
Union Pacific Railroad Company

Whereas the said affidavits sufficiently demonstrate that the said strikes may relate to a dispute as to the agreements, rules, regulation, interpretations or practices to be applied by the said railroads upon the expiration of the period during which the Award of Arbitration Board No. 282 shall continue in force as an award, the said period having expired, with respect to the Brotherhood of Locomotive Firemen & Enginemen on March 30, 1966, and the said strikes and picketing having commenced in the early morning hours of March 31, 1966;

Now, THEREFORE, it is further ORDERED that the said temporary restraining order of March 28, 1966 is interpreted by this Court to apply to the strikes and picketing that took place on March 31, 1966 on the lines of the following railroads:

Boston and Maine Corporation  
Central of Georgia Railway Company  
Grand Trunk Western Railroad  
Illinois Central Railroad Company  
Missouri Pacific Railroad Company  
New Orleans Union Passenger Terminal  
Pennsylvania Railroad Company  
Portland Terminal Company  
Seaboard Air Line Railroad Company  
Spokane International Railroad Company  
Union Pacific Railroad Company  
Texas and Pacific Railway Company

IT IS FURTHER ORDERED that the defendant Brotherhood of Locomotive Firemen and Enginemen and all other per-

sons subject to the said restraining order of March 28, 1966 are hereby ordered to cease the said strikes and picketing that are now taking place on the properties of the railroads referred to herein; and on any other of the plaintiffs on which such strikes may be occurring; and it is further

ORDERED that this order may be served by any person over the age of twenty-one years, not a party to this proceeding, selected for the purpose by the plaintiffs or any of them.

ALEXANDER HOLTZOFF,  
*United States District Judge.*

Dated: March 31, 1966

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Filed April 4, 1966

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA

Civil Action No. 777-66

BANGOR AND AROOSTOOK RAILROAD COMPANY, ET AL.,  
*Plaintiffs,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Defendant.*

Civil Action No. 784-66

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Plaintiff,*

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,  
ET AL., *Defendants,*

**Order Extending Temporary Restraining Order**

Pursuant to the consent of the parties, by and through counsel, and upon due deliberation, IT IS HEREBY ORDERED that the Temporary Restraining Order dated and entered in Civil Action No. 777-66 on March 28, 1966 and the Supplement to Temporary Restraining Order dated and entered in Civil Action No. 777-66 on March 31, 1966 are extended so that they shall expire at 4:00 P.M. on the fourth day of May 1966, unless further extended by order of this Court.

Dated: April 4, 1966.

ALEXANDER HOLTZOFF,  
*United States District Judge.*

Consented to:

RICHARD T. CONWAY  
Attorney for the plaintiffs  
in Civil Action No. 777-66  
and for the defendants in  
Civil Action No. 784-66.

ISSAC N. GRONER  
in Civil Action No. 777-66  
Attorney for the defendant  
and for the plaintiff in  
Civil Action No. 784-66.

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Filed April 22, 1966

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 777-66

BANGOR AND AROOSTOOK RAILROAD COMPANY,  
ET AL., *Plaintiffs,*

V.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Defendants.*

Civil Action No. 784-66

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Plaintiff*

V.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Defendants.*

**Order Extending Temporary Restraining Order**

Pursuant to the consent of the parties, by and through  
counsel, and upon due deliberation, IT IS HEREBY  
ORDERED that the Temporary Restraining Order dated

and entered in Civil Action No. 777-66 on March 28, 1966 and the Supplement to Temporary Restraining Order dated and entered in Civil Action No. 777-66 on March 31, 1966 are further extended so that they shall expire at 4:00 P.M. on May 11, 1966, unless further extended by order of this Court.

Dated: April 22, 1966

ALEXANDER HOLTZOFF  
*United States District Judge*

Consented to:

Francis M. Shea  
Attorney for the plaintiffs  
in Civil Action No. 777-66  
and for the defendants in  
Civil Action No. 784-66.

Joseph L. Rauh, Jr.  
Attorney for the defendant  
in Civil Action No. 777-66  
and for the plaintiff in  
Civil Action No. 784-66.

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Filed May 11, 1966

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 777-66

BANGOR AND AROOSTOOK RAILROAD COMPANY,  
ET AL., *Plaintiffs*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Defendants*.

Civil Action No. 784-66

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Plaintiff*

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Defendants*.

**Order Extending Temporary Restraining Order**

Pursuant to the consent of the parties, by and through counsel, and upon due deliberation, IT IS HEREBY ORDERED that the Temporary Restraining Order dated and entered in Civil Action No. 777-66 on March 28, 1966 and the Supplement to Temporary Restraining Order dated and entered in Civil Action No. 777-66 on March 31, 1966 and further extended so that they shall expire at 4:00 P.M. on May 13, 1966, unless further extended by order of this Court.

Dated: May 11, 1966, 2:45 P.M.

ALEXANDER HOLTZOFF  
*United States District Judge*

Consented to:

Richard T. Conway  
Attorney for the plaintiffs in Civil  
Action No. 777-66 and for the defendants  
in Civil Action No. 784-66.

Isaac N. Groner  
Attorney for the defendant in Civil  
Action No. 777-66 and for the plaintiff  
in Civil Action No. 784-66.

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BEFORE THE ARBITRATION BOARD  
Established by Joint Resolution of Congress

Approved August 28, 1963

Public Law 88-108

Arbitration Board No. 282

National Mediation Board

CERTAIN CARRIERS REPRESENTED BY THE EASTERN, WESTERN,  
AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES  
and

CERTAIN OF THEIR EMPLOYEES REPRESENTED BY THE BROTHER-  
HOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCO-  
MOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY  
CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF RAILWAY  
TRAINMEN, AND THE SWITCHMEN'S UNION OF NORTH  
AMERICA

Washington, D. C.  
November 26, 1963

**Award**

This Award is made pursuant to Public Law 88-108,  
88th Congress, S.J. Res. 102, enacted August 28, 1963.

The organization parties to the dispute named H. E.  
Gilbert and R. H. McDonald as organization members of

this Arbitration Board. The carrier parties to the dispute named Guy W. Knight and J. E. Wolfe as carrier members of the Board. Benjamin Aaron, James J. Healy, and Ralph T. Seward were named as neutral members by the President.

On September 11, 1963, the Board met, elected its Chairman and adopted rules of procedure. On September 23, 1963, in accordance with Section 3 of the Joint Resolution, the Secretary of Labor furnished to the Board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, together with memorandums setting forth his understanding of the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement.

Public hearings were held in Washington, D.C., on twenty-nine days between September 24 and November 2, 1963, at which witnesses were heard, exhibits introduced and arguments made. Rebuttal exhibits and written arguments were received on November 9, 1963.

On November 6 and 7, 1963, the neutral members of the Board with the agreement of the parties, visited certain railroad yards in the Chicago area. The sole purpose of these visits was to assist the neutral members in understanding the evidence and arguments presented at the formal hearings and nothing said or shown to them during these visits was accepted as evidence.

During the course of the proceedings, questions arose as to whether certain carriers and certain of their employees were or properly should be parties to the dispute and subject to the Board's jurisdiction. The carriers with regard to which such questions arose were the Union Railroad Company, the Florida East Coast Railway Company, and the Elgin, Joliet & Eastern Railway Company. The Board declined to rule on these jurisdictional questions

on the grounds that final determination of the Board's jurisdiction over any particular carrier and any particular group of employees could be made only by the courts and that time did not permit the Board to conduct the special proceedings required for such a determination. Nothing in this Award, however, and no action by the Board, including the reception into evidence of Carriers' Exhibit No. 1 or Employees' Rebuttal Exhibit No. 33, listing certain carriers as parties to the proceeding, is intended to prejudice the position of any carrier or any organization as to these jurisdictional questions.

The Board has incorporated in this Award any matters on which it found the parties were in agreement, has resolved the matters on which the parties were not in agreement, and has given due consideration to those matters on which the parties were in tentative agreement. Further, the Board has given due consideration to the effect of the Award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

After a full consideration of the evidence and arguments and upon the entire record, the Board makes a complete and final disposition of the issues submitted and finds and awards as follows.

#### I. DISPOSITION OF SECTION 6 NOTICES

Those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consists of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "Minimum Safe Crew Consist" and implementing proposals pertaining thereto are denied, except to the extent hereinafter provided.

## II. USE OF FIREMEN (HELPERS) ON OTHER THAN STEAM POWER

### PART A—SAVING CLAUSE

A (1). All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award.

### PART B—REDUCTIONS IN JOBS

B (1). Within 7 days following the effective date of this Award, each carrier covered by this Award shall have the right to give to each local chairman of the organization representing firemen (helpers) in each fireman (helper) seniority district a list of pool and regularly assigned freight engine crews (including pool and regularly assigned crews used in mixed, miscellaneous, and unclassified services) and a list of regularly assigned yard engine crews (including regularly assigned crews used in transfer, belt line, and miscellaneous yard services) then employed by the carrier in each such seniority district. The two lists shall include those engine crews which, in the carrier's judgment, based upon considerations of safety, undue work burden, and adequate and safe transportation service to the public, do not require the services of a fireman (helper).

B (2). Each local chairman, within 30 days of receipt of the carrier's lists, shall have the right, based upon considerations of safety, undue work burden, and adequate and safe transportation service to the public, to designate the engine crews in which the carrier shall be required to continue to use firemen (helpers); provided, that such designated crews shall not be more than 10 per cent of the freight engine crew, nor more than 10 per cent of the yard engine crews, in any seniority district, as such crews are listed by the carrier. Each local chairman's designation of crews to be operated with firemen (helpers),

made as provided herein, shall be final and binding upon the parties in interest and shall not be subject to challenge or review; but prior conference shall be had between the parties in interest with respect to the crews to be so designated by the local chairman. The time and place for the beginning of such conferences shall be agreed upon within 10 days after the receipt of the carrier's lists by the local chairman, and said time shall be within 20 days after the receipt of the said lists.

B (3). At 3-month intervals following the date of the carrier's original lists, the carrier shall give to each local chairman lists of pool and regularly assigned freight engine crews and of regularly assigned yard engine crews which have been established or discontinued in each seniority district during the preceeding 3 months and which meet the criteria set forth in paragraph B (1) of this Award; and the number of crews designated by the local chairman in which the carrier shall be required to use firemen (helpers) shall thereafter be adjusted, in the manner provided in paragraph B (2) of this Award; provided that not more than 10 per cent of the pool and regularly assigned freight engine crews nor more than 10 per cent of the regularly assigned yard engine crews, then employed by the carrier in any seniority district and included in either list, shall be designated as crews in which firemen (helpers) must be used.

B (4). Copies of all lists herein required to be furnished by the carrier to the local chairman shall be furnished to the general chairman of the organization involved.

B (5). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to use firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services), other than in crews designated

by the local chairman, pursuant to the provisions of paragraph B (2) and B (3) of this Award, except as may be necessary to provide jobs for firemen (helpers) whose employment rights are retained as provided in Parts C and D of this Award; provided that no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition.

#### PART C—REDUCTIONS IN EMPLOYMENT

C (1). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to hire firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services) unless or until such new hire is needed to man engine crews designated by a local chairman as provided in paragraphs B (2) and B (3) of this Award; and firemen (helpers) that are unneeded to man such designated crews may be separated from the carrier's payrolls and have all of their seniority and employment rights and relations terminated to the extent permitted in the following paragraphs of Part C of this Award.

C (2). Firemen (helpers) hired on or after a date 2 years prior to the effective date of this Award may be separated from the carrier's payrolls and have all of their employment and seniority rights and relations terminated, and in such case shall be entitled to a lump sum separation allowance in an amount to be determined as provided in Section 9 of the Washington Job Protection Agreement of May 21, 1936.

C (3). Firemen (helpers) hired prior to a date 2 years prior to the effective date of this Award whose average

monthly earnings as firemen (helpers), hostler helpers, hostlers, or engineers have not exceeded \$200 during the 24 full calendar months preceeding the effective date of this Award, may be separated from the carrier's payrolls and have all of their employment and seniority rights and relations terminated with a severance allowance equal to 100 percent of their earnings during the preceding 24 calendar months; or may elect to remain on the seniority lists of the carrier with rights to such work as they are qualified to perform, and which may be or become available to them, as provided in Part D of this Award.

C (4). Firemen (helpers) hired prior to a date 2 years prior to the effective date of this Award, who have not performed service as an engineer or as a fireman (helper) since that date, may be separated from the carrier's payrolls as firemen (helpers) and have all of their employment and seniority rights and relations as firemen (helpers) terminated with no severance allowance.

C (5). The provisions of paragraphs C (3) and C (4) of this Award shall not apply to officers or employees of the organizations representing firemen or engineers employed by the carrier, or to supervisory or management officials of the carrier, or to employees on appropriate leaves of absence, or to discharged employees whose cases for reinstatement are pending, providing, if not so situated, they could have met the minimum requirements of service or earnings.

C (6). All other fireman (helpers) with less than 10 years' seniority on the effective date of this Award shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day proceeding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of this Award, unless and until offered by the carrier another comparable job (such as, but not limited to,



engineer, fireman (helper), brakeman, or clerk in the same or another seniority district) for which they are, or can become, qualified. The offer of another job shall carry with it relocation expenses as provided for and under the conditions set forth in Section 10 of the Washington Job Protection Agreement of May 21, 1936, the continuation of accumulated seniority rights toward such purposes as vacation and other applicable fringe benefits, and guaranteed annual earnings, for a period not exceeding 5 years, equal to the total compensation received by each such employee as fireman (helper), hostler helper, hostler, or engineer during the last 12 months in which compensation was received prior to the date of transfer. Such offers of jobs shall be posted and made available to all qualified firemen (helpers) in order of seniority in the seniority district in which the job offered is located. If, within 7 days after notice is posted, no senior man elects to take such offered job, the most junior man then on the fireman (helper) roster in that seniority district must, within 3 days from receipt of written notice, accept the job or all of his employment and seniority rights and relations shall be terminated and, in that event, he shall be entitled to one-half the severance allowance provided for in paragraph C (3) of this Award. If such junior fireman (helper) shall fail to accept such job and thereby terminates his employment as herein provided, the next most junior fireman (helper) on that same roster must accept the job within 3 days from receipt of written notice or forfeit all of his employment and seniority rights and relations with the allowance provided for above. In each case of refusal to accept such job offer the next most junior fireman (helper) shall be required to accept, as provided for above, or forfeit his employment and seniority rights and relations with, in each case, the allowance provided for above, until there are no firemen (helpers) with less than 10 years' seniority remaining on the seniority roster for the seniority district in which the job offer is located. Thereafter,

the same procedure as is provided above shall be followed in the fireman (helper) seniority district which has its principal extra list for firemen (helpers) closest to the location of the job offered.

C (7). Firemen (helpers) with 10 or more years of seniority as of the effective date of this Award, who are not separated from the carrier's payrolls under the provisions of paragraphs C (3) or C (4) of this Award, shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of this Award, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition.

#### PART D—RIGHTS TO WORK

D (1). Firemen (helpers) who elect to remain on the seniority lists of the carrier as provided in paragraph C (3) of this Award shall be entitled to exercise their seniority rights as firemen (helpers) to available employment in engine crews used in passenger service and in freight and yard engine crews designated by the local chairmen in their respective seniority districts as provided in paragraphs B (2) and B (3) of this Award, as hostlers or hostlers helpers, and as engineers in any class of service for which they are qualified; but such firemen (helpers) shall have no rights to and shall not claim seniority rights to or employment in any other service.

D (2). Firemen (helpers) who remain on the active working lists of the carrier under the provisions of paragraphs C (6) and C (7) of this Award shall have the right to work their turn as firemen (helpers) to the extent that positions as firemen (helpers) are available in their respective seniority districts on locomotives of the type to which firemen (helpers) were assigned and in a class of service calling for the service of a fireman (helper) prior

to the effective date of this Award; provided, that such firemen (helpers) shall have no right to jobs that the carrier may discontinue pursuant to the provisions of this Award if other employment in any class of engine service, for which they are qualified, is available to them in their respective seniority districts. Such firemen (helpers) will have their seniority rights, existing as of the effective date of this Award, for promotion in their turn, preserved.

D (3). Extra lists shall be adjusted and firemen (helpers) shall be furloughed and recalled pursuant to the provisions of rules in effect as of the day before the day this Award becomes effective, as modified by and subject to the provisions of this Award; provided, that the carrier shall not be required to use firemen (helpers) covered by paragraph D (2) of this Award in freight or yard crews, other than in crews designated by the local chairmen pursuant to the provisions of paragraphs B (2) and B (3), if the services of such employees are required on the extra list to fill vacancies in crews or positions where firemen (helpers) must be used, as in passenger service or under the provisions of this Award.

D (4). Firemen (helpers) retained in service under the conditions set forth in Parts C and D of this Award, when assigned to the extra lists for firemen (helpers), shall not be called to fill vacancies in crews in freight and yard service which have not been designated by the local chairmen pursuant to the provisions of paragraphs B (2) and B (3) of this Award if and when their services are required to fill temporary vacancies as locomotive engineers, or temporary vacancies for firemen (helpers) in passenger service, or temporary vacancies for firemen (helpers) in crews designated by the local chairmen as provided in paragraphs B (2) and B (3) of this Award.

#### PART E—CONTINUING STUDY

E (1). Within 30 days following the effective date of this Award, the parties shall establish a National Joint

Board charged with responsibility for making an intensive and continuing study of the experience in road freight and yard service with and without the employment of firemen (helpers) during the period that this Award remains in effect. During the 3-month period before the date this Award is due to expire, the National Joint Board shall prepare and issue to the parties a report based on its study.

E (2). The National Joint Board established in paragraph E (1) shall consist of 4 members, of whom 2 shall be selected by the carriers, and one each by the Brotherhood of Locomotive Firemen and Enginemen, and by the Brotherhood of Locomotive Engineers. The expenses of the Board shall be borne by the participating parties.

### III. CONSIST OF ROAD AND YARD CREWS (OTHER THAN ENGINE SERVICE)

#### PART A—BASIC PROVISIONS

A (1). The issue of crew consist (other than engine service) shall be remanded to the local properties for negotiation. Pending the consummation of local agreements disposing of the issue, the following provisions shall govern the use of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, and flagmen) employed in all classes of road service, including all miscellaneous and unclassified services, and the use of brakemen or helpers employed in all classes of yard, transfer, and belt line service, including all miscellaneous yard services.

A (2). No change shall be made in the scope or application of rules in effect immediately prior to the effective date of this Award, whether established by agreement, interpretation, or practice, which require a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen, or flagmen) in any class of road service, including all miscellaneous and unclassified

services, or which require a stipulated number of brakemen or helpers in any class of yard, transfer, or belt line service, including all miscellaneous yard services, except by agreement, or pursuant to the provisions of this Award.

A (3). Either party in interest shall give written notice of any proposed change in any such stipulated number of trainmen (assistant conductors, ticket collectors, baggage men, brakemen, or flagmen) used in any class of road service, including all miscellaneous and unclassified services, in the following categories:

- (a) branch lines, including the use of main lines where necessary to reach initial or final terminals of the branch line train; and
- (b) road service where existing rule, practice, or interpretation now requires the employment of more or less than 2 trainmen;

and of any proposed change in any such stipulated number of brakemen or helpers used in any class of yard, transfer, or belt line service, including all miscellaneous yard service. The parties in interest, as that term is used in this Award, shall include only the carrier and the organization representing the class or craft of employees holding seniority rights to the position or positions proposed to be abolished or created in the seniority district or districts in which such changes are proposed. The time and place for the beginning of conferences between the representatives of the parties in interest with respect to such proposed change or changes shall be agreed upon within 10 days after the receipt of said notice, and said time shall be within 15 days after the receipt of said notice.

#### PART B—REVIEW PROCEDURES

B (1). If no agreement is reached between the parties as to the application of the guidelines enumerated in Part C of this Award, the dispute limited to the application of

such guidelines as related to the issue involved may be referred by either party to a special board of adjustment.

B (2). Such special board of adjustment shall be chosen in the following manner:

- (a) Each party in interest shall name one member within 10 days after notice has been given that the dispute will be referred to such special board of adjustment; and the two partisan members so chosen, within 10 days after the date of the selection of the second partisan member, shall name the neutral member, who shall be chairman of the board. If the members chosen by the parties shall fail to name the neutral member of the board within 10 days, the National Mediation Board shall be requested to name such member within 5 days after the receipt of such request.
- (b) If either party fails to name a member of the board within the 10 days provided in paragraph B(2) (a) of this Award, the National Mediation Board shall be requested to name such member in lieu of such party and shall also name the neutral member necessary to constitute a board of 3 members, all within 5 days after the receipt of such request.

B (3). Decisions of the special board of adjustment shall be rendered within 60 days after the appointment of the neutral member. A decision of the majority of the board shall be binding upon both parties. The parties shall assume the costs and expenses of their respective representatives. The costs and expenses of the neutral member and any incidental expenses shall be shared equally by the parties unless different arrangements can be made by mutual agreement.

services, or which require a stipulated number of brakemen or helpers in any class of yard, transfer, or belt line service, including all miscellaneous yard services, except by agreement, or pursuant to the provisions of this Award.

A (3). Either party in interest shall give written notice of any proposed change in any such stipulated number of trainmen (assistant conductors, ticket collectors, baggage men, brakemen, or flagmen) used in any class of road service, including all miscellaneous and unclassified services, in the following categories:

- (a) branch lines, including the use of main lines where necessary to reach initial or final terminals of the branch line train; and
- (b) road service where existing rule, practice, or interpretation now requires the employment of more or less than 2 trainmen;

and of any proposed change in any such stipulated number of brakemen or helpers used in any class of yard, transfer, or belt line service, including all miscellaneous yard service. The parties in interest, as that term is used in this Award, shall include only the carrier and the organization representing the class or craft of employees holding seniority rights to the position or positions proposed to be abolished or created in the seniority district or districts in which such changes are proposed. The time and place for the beginning of conferences between the representatives of the parties in interest with respect to such proposed change or changes shall be agreed upon within 10 days after the receipt of said notice, and said time shall be within 15 days after the receipt of said notice.

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- (b) If either party fails to name a member of the board within the 10 days provided in paragraph B(2) (a) of this Award, the National Mediation Board shall be requested to name such member in lieu of such party and shall also name the neutral member necessary to constitute a board of 3 members, all within 5 days after the receipt of such request.

B (3). Decisions of the special board of adjustment shall be rendered within 60 days after the appointment of the neutral member. A decision of the majority of the board shall be binding upon both parties. The parties shall assume the costs and expenses of their respective representatives. The costs and expenses of the neutral member and any incidental expenses shall be shared equally by the parties unless different arrangements can be made by mutual agreement.



## PART C—GUIDELINES

C (1). The special board of adjustment in making its decisions shall be governed by the following general considerations, and, where applicable, particular considerations, although none of these factors alone shall be controlling of the board's decisions.

C (2). General considerations.

- (a) Assurance of adequate safety.
- (b) Avoidance of unreasonable burden or workload on members of the crew.
- (c) Changes in operating conditions, including density of traffic.
- (d) Practices regarding the consist of crews in comparable situations where such practices are not in dispute.
- (e) Special conditions which exist on any particular assignment.
- (f) Duties required in compliance with the carrier's operating rules and instructions applicable to the crew in question.
- (g) Physical characteristics of the line to be traversed and in the areas where switching or industrial work is to be performed (including grade and general climatic conditions).
- (h) The number of highway, street, road, railroad, or other crossings or intersections to be protected.
- (i) State, county, or municipal regulations applicable with respect to highway, street, road, railroad, or other crossings or intersections.
- (j) Availability and use of communication equipment (such as, but not limited to, end-to-end train radio, train to way-side radio, and walkie-talkies).

- (k) The presence or absence of a fireman in the engine service crew.

C (3). Particular considerations—passenger road service.

- (a) The amount of baggage and storage mail to be handled on and off the train at intermediate stations by the train crew.
- (b) The number of passenger cars handled in the train and passenger count.
- (c) The method of handling passenger transportation (tickets).
- (d) The number of passengers boarding and leaving the train at intermediate stations.
- (e) Duties required other than the above on any particular assignment.

C (4). Particular considerations—freight service, including miscellaneous and unclassified services.

- (a) The amount and nature of work to be performed en route.
- (b) The length of train, in context with the amount and nature of work to be performed en route.
- (c) Time limitations applicable to the particular assignment.

C (5). Particular considerations—yard, transfer, and belt line service, including all miscellaneous yard services.

- (a) The amount and nature of the work to be performed.
- (b) Volume of work considered in context with applicable service time limitations.

## PART D—EMPLOYEE PROTECTION

D (1). Road trainmen and yard brakemen or helpers, other than those on furlough on the date that this Award becomes effective, shall be known and designated, for the purposes of this Award, as "protected employees."

D (2). A "protected employee," known and designated as provided in paragraph D (1) of this Award, shall retain his rights to and obligations to protect road and yard service assignments (including all assignments in miscellaneous and unclassified road services and all assignments in transfer, belt line, and miscellaneous yard services) for which he is qualified, as provided by rules in effect on the day preceding the day this Award becomes effective, to the extent that such positions are available to him in his seniority district, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of road trainmen and yard brakemen or helpers by natural attrition; provided, that no such "protected employee" shall have any right to jobs or positions that the carrier may discontinue pursuant to the provisions of this Award if other employment in any such classes of service, for which such employee is qualified, is available to him in his seniority district. If and when the carrier is required to create new jobs or positions for road trainmen or yard brakemen or helpers, pursuant to the provisions of this Award, such positions shall first be filled, to the extent available, by "protected employees" then filling positions which the carriers would otherwise have the right to abolish or eliminate pursuant to the provisions of this Award, before such jobs or positions may be claimed by other employees of the carrier in accordance with their seniority rights.

#### IV. DURATION

This Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise.

Dated: November 25, 1963

BENJAMIN AARON  
Neutral Member

JAMES J. HEALY  
Neutral Member

RALPH T. SEWARD  
Chairman of the Arbitration  
Board

Concurring:

GUY W. KNIGHT  
Carrier Member

J. E. WOLFE  
Carrier Member

Dissenting:

H. E. GILBERT  
Organization Member

R. H. McDONALD  
Organization Member

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#### Interpretations of Arbitration Board No. 282

##### Carriers' Questions

##### Section II-Part B(1) and B(2)

Question #5: The organization representatives have taken the position that the submission of lists pursuant to Section II, Part B(1), of the award in so-called "full crew law states" is improper or illegal, and in certain of such instances they have refused to make designations under Part B(2) of assignments on which firemen shall be retained and in other instances they have designated all of the assignments listed by the carrier. It is the carriers' position that the carriers were required to submit lists under Part B(1) in order that there will be a classification of "blankable" and "non-blankable" jobs when and if such full crew laws are amended or repealed; that where the local chairmen have failed to make designations pursuant to Part B(2), all of the jobs listed are "blankable", and where

they have designated all of the jobs listed as requiring the retention of firemen, no more than 10 per cent of such jobs so designated will be accepted as requiring the retention of firemen, the others to be in the "blankable" category. Is the carriers' position correct?

Answer: (May 17, 1964) The obligations and rights of the parties with respect to the listing of jobs and the exercise of the veto under Section II, Parts B(1), B(2), B(3) and B(4) of the Award are the same in the so-called "full crew law states" as in all other states. Local chairmen who have failed to make designations pursuant to Part B(2) in "full crew law states" may make such designations on or before June 3, 1964. Where the present designation by the local chairman designates all of the jobs listed as requiring the retention of firemen, he should modify such designations to conform to the 10 per cent limitation as interpreted by the Board in its answer to carrier's question No. 4 under Section II, Parts B(1) and B(2) on or before June 3, 1964.

#### Section II-Part C(2)

Question #3: It is the carriers' understanding that firemen employed subsequent to January 25, 1964 are covered by Part C(2) of Section II of the Award in that they are "Firemen (helpers) hired on or after a date 2 years prior to the effective date of this Award \* \*.", and that, consequently, they may be separated from the carrier's payrolls but will be entitled to the separation allowance specified in C(2). Is the carriers' understanding correct?

Answer (June 9, 1964) Yes, subject to the Answer to Carriers' Question #2—Section II, Part C(2) immediately above.

#### BLF&E Questions

Question #80: (a) It is the carriers' contention that helpers-firemen hired subsequent to the implementation of the Award (March 7, 1964), need only be called to fill

vacancies in passenger service, hostling service, and on vetoed jobs as prescribed in Paragraph C-3 of the Award. The employees contend that such helpers-firemen are to be allowed full and complete exercise of their seniority to any existing assignment in accordance with schedule rules. Which is correct?

Answer: (Oct. 23, 1964) (a) The carriers' contention is correct.

Question #81: In view of the interpretation of the Award as rendered in BLF&E Question No. 43, is carrier required to pay the expense of moving; allow full equity in the loss endured through sale of residence; and allow compensation for all time lost by a helper-fireman who is required to relocate his residence on the same seniority district through exercise of his seniority to an assignment which has not been "blanked" by the carrier?

Answer: (Oct. 23, 1964) The Award does not provide for such compensation.

Question # 123: Article 6, Section 5 of the BLF&E Schedule Agreement in effect on the St. Louis-San Francisco Railway reads in pertinent part as follows:

"There shall be a blackboard kept at all roundhouses on which shall be kept posted the leaving time of all trains and the names of all extra firemen on hand. The first fireman arriving at a terminal will be the first fireman out, regardless of terminal delay."

The management now contends that the foregoing rule was modified by Award 282 and that they may now withhold a first-out extra helper fireman, who has been employed or re-employed since implementation of the Award, from a vacancy on an extra assignment. This in turn requires a second or third out C-6 or C-7 helper-fireman to runaround the aforementioned employee which the organization contends is a violation of the Award and the agreement rule as cited. Which contention is correct?

Answer: (May 6, 1965) The award does have the effect of modifying the rule referred to in the question insofar as C-3 firemen (helpers) are concerned. This was indicated in the Board's answer to B.L.F. & E. Questions 15 and 65 (Pages 36 and 48, respectively). Inasmuch as new hires are entitled to no greater rights than C-3 firemen it follows that the rule is modified with respect to new hires also.

Question # 133: May the Burlington Railroad arbitrarily furlough and refuse to recall to service those helpers-firemen hired since implementation of Award 282, when vacancies exist on "must fill" jobs even though C(6) or C(7) men may be working blankable jobs?

Answer: (Sept. 16, 1965) On the basis of the facts presented which indicate that no "must fill" jobs were operated without a fireman (helper), the carrier did have the right to furlough the firemen (helpers) who were hired subsequent to the effective date of the award.

Question # 147: Certain carriers, including but not limited to Union Pacific and Birmingham Southern, are pursuing the practice of depriving C(3) firemen of jobs on vetoed assignments, and of jobs in passenger service and hostler service, which jobs they acquired by successfully bidding for them pursuant to the established bulletining practices that were in effect prior to the effective date of the Award. The C(3) firemen are being forced from the positions held by them, by the acts of the carriers compelling C(6) and C(7) firemen to leave blankable jobs held by them and to take the jobs held by the C(3) firemen. This practice is employed regardless of whether the C(6) and C(7) firemen are senior to the C(3) firemen or have less seniority than the C(3) firemen.

The carriers take the position that the practice described is authorized by the Award, and that C(3) firemen may be kept in a furloughed status after having been removed

from jobs in the manner indicated until such time as all blankable assignments on a seniority district have been blanked, and vacancies have developed on vetoed assignments and in passenger service and hostling service which must either be filled by hiring new firemen or by calling the C(3) firemen back to service.

The Brotherhood takes the position that the foregoing practice is contrary to the employment rights given C(3) firemen by Parts C(3) and D(1) of the Award, and that C(3) firemen have the right to continue to hold jobs which they properly acquired regardless of whether they are junior or are senior to the C(6) and C(7) firemen, until such time as the assignments held by the C(3) firemen have become vacated in a manner consistent with the rules that were in effect on the day preceding the day the Award became effective.

The Board's answer to BLF&E Question No. 65 is not sufficiently specific to eliminate disagreement and dispute on this subject.

Answer: (Feb. 20, 1966) The Brotherhood's position is not correct.

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Filed May 2, 1966

Civil Action No. 777-66

Civil Action No. 784-66

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**Stipulation**

The parties hereby stipulate and agree, by and through counsel, for purposes of the trial or hearing now scheduled to be held in this case on May 4, 1966, as follows:



## I. FACTS

A. The facts set forth in this Stipulation supplement the facts which have been admitted in the pleadings in either or both of the above-entitled proceedings.

B. The plaintiffs in Civil Action No. 777-66 and defendants in Civil Action No. 784-66 hereinafter are collectively referred to as the "railroads." The defendant in Civil Action No. 777-66 and the plaintiff in Civil Action No. 784-66 hereinafter is referred to as the "BLF&E".

C. The parties agree that all of the railroads\* and their employees represented by the BLF&E were subject to Public Law 88-108 and the Award by Arbitration Board No. 282, prior to the expiration thereof, except with respect to those referred to in the remainder of this Section as to which the parties reserve the right to contend otherwise on the basis of the facts set forth therein:

1. The New Orleans Public Belt Railroad, on November 11, 1959, served the Section 6 notice referred to in paragraph 6 of the Complaint in C. A. No. 777-66 and in paragraph 11 of the Complaint in C. A. No. 784-66 upon the BLF&E. The BLF&E, on September 7, 1960, served the New Orleans Public Belt Railroad with the Section 6 notice referred to in paragraph 8 of the Complaint in C. A. No. 777-66 and in paragraph 12 of the Complaint in C. A. No. 784-66. Neither the New Orleans Public Belt Railroad nor the BLF&E withdrew the said Section 6 notices. The New Orleans Public Belt Railroad was not a party to or represented in the proceedings before Arbitration Board No. 282. In *The City of New Orleans Acting by and through the Public Belt Railroad Commission v. Brotherhood of Locomotive Firemen and Enginemen, et al.*, Civil Action

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\* An oral motion to dismiss the Interstate Railroad as a party to the case will be made at the commencement of the trial, and nothing herein is intended to apply to that railroad.

No. 2400-64, a declaratory judgment was sought from the United States District Court for the District of Columbia that, among other things, the Award by Arbitration Board No. 282 applied to the New Orleans Public Belt Railroad and its employees represented by the BLF&E. In connection with the settlement of that litigation, the New Orleans Public Belt Railroad and the BLF&E entered into the agreement attached hereto as Exhibit A, which was supplemented by the agreement attached hereto as Exhibit B.

2. The Mississippi Export Railroad Company, on November 16, 1959, served the Section 6 notice referred to in paragraph 6 of the Complaint in C. A. No. 777-66 and in paragraph 11 of the Complaint in C. A. No. 784-66 upon the BLF&E. The BLF&E, on September 7, 1960, served the Mississippi Export Railroad Company with the Section 6 notice referred to in paragraph 8 of the Complaints in C. A. No. 777-66 and in Paragraph 12 of the Complaint in C. A. No. 784-66. Neither the Mississippi Export Railroad Company nor the BLF&E withdrew the said Section 6 notices. The Mississippi Export Railroad Company was not a party to or represented in the proceedings before Arbitration Board No. 282. In *Mississippi Export Railroad Company v. Brotherhood of Locomotive Firemen and Enginemen, et al.*, Civil Action No. 3103(S), the plaintiff sought from the United States District Court for the Southern District of Mississippi, Southern Division, among other things, a declaratory judgment that the Award by Arbitration Board No. 282 applied to the Mississippi Export Railroad Company and its employees represented by the BLF&E. The Order attached hereto as Exhibit C was entered in said litigation on December 16, 1965. An appeal by the BLF&E from that order is now pending in the United States Court of Appeals for the Fifth Circuit (Docket No. 23329).

3. This Subsection of the Stipulation relates only to the following railroads (collectively referred to in the remainder of this Subsection as the "carriers"):

Southern Railway Company  
 The Cincinnati, New Orleans & Texas Pacific Ry. Co.  
 Harriman and Northeastern Railroad  
 The Alabama Great Southern Railroad Company  
 The New Orleans Terminal Company  
 Georgia Southern and Florida Railway Company  
 St. Johns River Terminal Company  
 Carolina and Northwestern Railway Company

The carriers, on November 2, 1959, served the Section 6 notice referred to in paragraph 6 of the Complaint in C. A. No. 777-66 and in paragraph 11 of the Complaint in C. A. No. 784-66 upon the BLF&E. The BLF&E, on September 7, 1960, served the carriers with the Section 6 notice referred to in paragraph 8 of the Complaint in C. A. No. 777-66 and in paragraph 12 of the Complaint in C. A. No. 784-66. On October 17, 1960, the carriers withdrew their Section 6 notices of November 2, 1959, but the Section 6 notices served by the BLF&E upon the carriers on September 7, 1960 were not withdrawn. The carriers were not parties to or represented in the proceedings before Arbitration Board No. 282. On February 18, 1965, the carriers and the BLF&E entered into the agreements attached hereto as Exhibits D and E.

4. The Savannah & Atlanta Railway Company, on November 12, 1959, served the Section 6 notice referred to in paragraph 6 of the Complaint in C. A. No. 777-66 and in paragraph 11 of the Complaint in C. A. No. 784-66 upon the BLF&E. The BLF&E, on September 7, 1960, served the Savannah & Atlanta Railway Company with the Section 6 notice referred to in paragraph 8 of the Complaint in C. A. No. 777-66 and in paragraph 12 of the Complaint in C. A. No. 784-66. In an initial conference upon the said

notices, the parties agreed to recess further conferences until after national handling of similar notices served by or upon most of the other railroads had been completed. The Savannah & Atlanta Railway Company was not a party to or represented in the proceedings before Arbitration Board No. 282. After the issuance of the Award by Arbitration Board No. 282, the said railroad and the BLF&E resumed negotiations upon their respective notices and entered into the agreement attached hereto as Exhibit F.

D. Most, if not all, of the railroads who were not parties to the National Diesel Agreement referred to in paragraph 8 of the Complaint in C. A. No. 784-66, for some time prior to and as of the effective date of the Award by Arbitration Board No. 282 were parties to agreements with the BLF&E which contained a provision similar to Section 4 of the said National Diesel Agreement referred to in paragraph 9 of the Complaint in C. A. No. 784-66.

E. Most, if not all, of the railroads were, for some time prior to and as of the effective date of the Award by Arbitration Board No. 282, parties to agreements entered into after collective bargaining with the BLF&E which established rules (sometimes referred to as "schedules" or "schedule rules") governing certain terms and conditions of employment. While the provisions of such agreements varied to an extent as among the various railroads, they generally included, among other things, rules governing the establishment, exercise and protection of seniority rights and rules governing the operations and adjustment of extra boards. An example of such an agreement, which is included as a part of this Stipulation, is the agreement between the Union Pacific Railroad Company (Eastern District) and the BLF&E entitled "Schedule of Rules Governing Wages and Working Conditions of Locomotive Firemen, Helpers, Hostlers and Hostler Helpers represented by Brotherhood of Locomotive Firemen and Enginemen," effective May 1, 1954. Because of its size and format, the

said agreement is not attached hereto and may be offered separately at the trial.\* The parties agree that the copy of the said agreement to be offered at that time is authentic, and that no party will object to the admission of the said agreement in evidence on any ground other than relevancy or materiality.

F. Certain railroads, prior to the expiration of the Award, listed pursuant to Section II-B(1) and/or Section II-B(3) of the Award a number of fireman (helper) assignments which in judgment of such railroads did not require the services of a fireman (helper) and such assignments were not included by the BLF&E pursuant to Section II-B(2) or Section II-B(3) of the Award among those on which such railroads were required to continue the use of firemen (helpers), but such railroad did not discontinue the use of firemen (helpers) on such assignments because a State law in effect throughout the period of the Award required the use of firemen (helpers) thereon. As a result, such railroads did not prior to the expiration of the Award separate from employment certain firemen (helpers) coming within Sections II-C(2), II-C(3), II-C(4) or II-C(6) of the Award (or, in respect to those coming within Section II-C(6), to first offer comparable jobs) because the said firemen (helpers) were needed in order that sufficient firemen (helpers) would be available to man the assignments referred to in the first sentence of this Section. Some of the firemen (helpers) thus retained in employment as firemen (helpers) were hired after the effective date of the Award because additional firemen (helpers) were needed in order that sufficient firemen (helpers) would be available to man the assignments referred to in the first sentence of this Section. Oregon, which has had a law requiring the use of firemen (helpers) on assignments of the nature de-

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\* Certain supplements and modifications agreed to since May 1, 1954, are not included in the printed copy of the agreement which may be offered at the trial.

scribed in the first sentence of this Section, has repealed that law effective January 1, 1967.

G. This Stipulation includes the Award by Arbitration Board No. 282 (dated November 26, 1963) and the Interpretations by Arbitration Board No. 282 (dated May 17, 1964; May 22, 1964; June 9, 1964; September 16, 1964; October 23, 1964; April 14, 1965; May 6, 1965; June 30, 1965; September 16, 1965; October 10, 1965; December 12, 1965; January 16, 1966; February 20, 1966; and March 29, 1966). Because of their bulk, the said Award and Interpretations are not attached hereto and may be offered separately at the trial. The parties agree that the copies of the said Award and Interpretations to be offered at that time are authentic, and that no party will object to the admission of the said Award and Interpretations in evidence on any ground other than relevancy or materiality.

H. This Stipulation includes the Report of the National Joint Board Established Pursuant to the Award of Arbitration Board No. 282 on Experience in Freight and Yard Service with and without the Employment of Firemen, dated January 5, 1966. The said Report was not signed or agreed to by the representative of the BLF&E on the National Joint Board, who submitted a separate statement entitled "Report to the Parties of the National Joint Board Created under Section II, Part (E) of the Award of Arbitration Board 282," dated January 5, 1966. This Stipulation also includes the said separate statement by the representative of the BLF&E. Because of their bulk, the two documents referred to in this Section are not attached hereto and may be offered separately at the trial. The parties agree that the copies of the said documents to be offered at that time are authentic, and no party will object to admission in evidence of either document on any ground other than relevancy or materiality.

I. Pursuant to Section II of the Award, the railroads have reduced the number of firemen (helpers) in their employ by about 18,000, and have paid separation allowances totalling about \$36,000,000 to individual firemen (helpers) who were separated from employment by the railroads. About 1200 employees accepted offers of other jobs under Section II-C(6) of the Award. On the basis of statistics published by the Interstate Commerce Commission for the period through November 1965, it is estimated that the savings to the railroads resulting from their applications of Section II of the Award prior to December 1, 1965 totalled about \$179,000,000.

J. Exhibit G hereto is a certified copy of a resolution adopted by the Committee on Commerce of the United States Senate.

K. On or about November 15, 1965, the BLF&E served certain of the railroads with proposals under Section 6 of the Railway Labor Act, identified as "Notice No. 1," "Notice No. 2" and "Notice No. 3," substantially in the form of Exhibit H hereto.\* None of the said proposals were served upon the following railroads:

Buffalo Creek Railroad  
 Bush Terminal Railroad Company  
 Canadian National Rys. (Great Lakes Region and  
 St. Lawrence Region)  
 Long Island Rail Road Company  
 Pittsburgh, Chartiers & Youghioghenny R. Co.  
 Savannah & Atlanta Railway Co.  
 St. Paul Union Depot Company  
 Staten Island Rapid Transit Railway Company

\* The identification herein of the carriers which were or were not served with the BLF&E proposals of November 15, 1965, or portions thereof, is believed to be accurate, but the parties reserve the right to show otherwise if the issue should arise in some subsequent proceedings in this or some other case.



Only those portions of the proposals identified as "Notice No. 1" and "Notice No. 2" were served upon the following railroads:

Chicago, West Pullman & Southern R. Co.  
Houston Belt & Terminal Railway, Co.  
Ironton Railroad Company  
Joint Texas Division of Chicago, Rock Island  
& Pacific and Fort Worth and Denver  
McKeesport Connecting Railroad Co.  
Pittsburgh & Shawmut Railroad Co.  
Port Terminal Railroad Association  
Texas City Terminal Railway Co.  
Union Terminal-St. Joseph Belt R. Cos.  
Washington Terminal Company

Only those portions of the proposals identified as "Notice No. 1" and "Notice No. 3" were served upon the following railroads:

Chicago & Western Indiana R. Co.  
Des Moines Union Railway Co.  
Minnesota, Dakota & Western Railway Co.  
Oregon, California & Eastern Railway Co.

Only that portion of the proposals identified as "Notice No. 1" was served upon the following railroads:

Cincinnati Union Terminal Co.  
Lake Superior & Ishpeming Railroad Co.  
New Orleans & Lower Coast Railroad Co.  
Wichita Terminal Association

Only that portion of the proposals identified as "Notice No. 3" was served upon the following railroads:

Mississippi Export Railroad Co.  
Southern Railway Co.  
Cincinnati, New Orleans & Texas Pacific Ry. Co.  
Harriman & Northeastern Railroad  
Alabama Great Southern Railroad Co.  
New Orleans & Northeastern Railroad Co.



New Orleans Terminal Company  
Georgia Southern & Florida Railway Co.  
St. Johns River Terminal Co.  
Carolina & Northwestern Railway Co.

All the railroads except those named above were served with all portions of the proposals substantially as set forth in Exhibit H hereto. Shortly after November 15, 1965, the railroads that received the BLF&E proposals responded thereto substantially in the form of Exhibit I hereto.

L. Prior to March 30, 1966 and within the times specified by Section 6 of the Railway Labor Act, conferences were held between the parties on many, if not all, of the railroads concerned with respect to the proposals served by the BLF&E on or about November 15, 1965, but no agreements were reached on the merits. The railroads in those conferences maintained that they had no obligation to negotiate with the BLF&E with respect to the subjects of its proposals because they were premature in that they were served prior to the expiration of the Award, and also because they related to matters upon which the railroads were not required to bargain with the BLF&E under the Railway Labor Act. The representative of the BLF&E, on the other hand, asserted that the proposals by the BLF&E were not premature and were bargainable under the Railway Labor Act. The representatives of the BLF&E discussed the two points referred to above, and also the merits of the proposals by the BLF&E. The representatives of the railroads discussed the two points referred to above, but declined to discuss the merits of the proposals by the BLF&E.

M. On or about January 20, 1966, the BLF&E applied to the National Mediation Board for mediation with respect to all aspects of its proposals served upon the following railroads (or upon certain divisions thereof):

Akron, Canton & Youngstown R. Co.  
Atchison, Topeka & Santa Fe R. Co.  
Atlantic Coast Line R. Co.

Baltimore & Ohio R. Co.  
Chesapeake & Ohio R. Co.  
Louisville & Nashville R. Co.  
Norfolk & Western R. Co.

N. The BLF&E also applied to the National Mediation Board, on or about January 20, 1966, for mediation with respect to those aspects of its proposals identified as Notice No. 1 and Notice No. 2 served upon the Chesapeake & Ohio R. Co. (Chesapeake Division) and the Southern Pacific Company (Pacific System); applied to the National Mediation Board, on or about January 25, 1966, for mediation with respect to that aspect of its proposals identified as Notice No. 3 served upon the Chesapeake & Ohio R. Co. (Chesapeake Division); applied to the National Mediation Board, on or about January 25, 1966, for mediation with respect to those aspects of its proposals identified as Notice No. 1 and Notice No. 2 served upon the Southern Pacific Company (Pacific Lines including former El Paso Southwestern); applied to the National Mediation Board, on or about February 7, 1966, for mediation with respect to that aspect of its proposals similar to that identified as Notice No. 3 served upon the Southern Pacific Company (Pacific System); and applied to the National Mediation Board, on or about March 4, 1966, for mediation with respect to that aspect of its proposals identified as Notice No. 3 served upon certain members of the Southern Railway System (Southern Railway Co.; Cincinnati, New Orleans & Texas Pacific R. Co.; Harriman and Northeastern Railroad; Alabama Great Southern R. Co.; New Orleans & Northeastern R. Co.; New Orleans Terminal Co.; Georgia Southern & Florida R. Co.; St. Johns River Terminal Co.; and Carolina Northwestern R. Co.).

O. Except as indicated above, the BLF&E has not applied to the National Mediation Board for mediation with respect to its proposals served on or about November 15, 1965.

P. The National Mediation Board, at various times from on or about February 14, 1966, and prior to March 30, 1966, docketed for mediation upon the applications by the BLF&E that aspect of the proposals identified as Notice No. 1 served by the BLF&E upon the following railroads (or certain divisions thereof):

Akron, Canton & Youngstown R. Co. (A-7743)  
 Baltimore & Ohio R. Co. (A-7746 and A-7746 Sub. 1)  
 Chesapeake & Ohio R. Co. (A-7706, A-7707 and A-7708)  
 Louisville & Nashville R. Co. (A-7701 and A-7702)  
 Norfolk & Western R. Co. (A-7747 and A-7747 Sub. 2)  
 Southern Pacific Company (A-7709 and A-7710)

The National Mediation Board, prior to March 30, 1966, docketed for investigation (File C-3654) upon the applications by the BLF&E that aspect of the proposals identified as Notice No. 2 served by the BLF&E upon the following railroads (or certain divisions thereof):

Akron, Canton & Youngstown R. Co. (Sub. 1)  
 Atlantic Coast Line R. Co. (Sub. 2)  
 Atchison, Topeka & Santa Fe R. Co. (Sub. 3, 4, and 5)  
 Baltimore & Ohio R. Co. (Sub. 6 and 7)  
 Chesapeake & Ohio R. Co. (Sub. 8, 9 and 10)  
 Louisville & Nashville R. Co. (Sub. 11 and 12)  
 Norfolk & Western R. Co. (Sub. 13-19)  
 Southern Pacific Company (Sub. 20 and 21)

Q. Except as indicated above, the applications by the BLF&E for mediation with respect to its proposals served on or about November 15, 1965 have not been docketed by the National Mediation Board. Mediation has not been held with respect to any of the applications by the BLF&E for mediation which were docketed by the National Mediation Board for mediation or investigation as set forth above. The railroads which were served by the BLF&E have not applied to the National Mediation Board for

mediation with respect to any of the proposals served on or about November 15, 1965 by the BLF&E.

R. The railroads with respect to which mediation has been applied for by the BLF&E, as set forth above, have authorized the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees to act as their representatives in connection with any mediation proceedings. The parties stipulate that Exhibits J through Z and AA attached hereto are true and correct copies of certain correspondence between the parties (or their representatives) and between the parties (or their representatives) and the National Mediation Board with respect to the applications by the BLF&E for mediation and subsequent occurrences thereon.

S. On or about January 31, 1966, certain of the railroads served the BLF&E with proposals under Section 6 of the Railway Labor Act substantially in the form of Exhibit BB hereto.\* The said proposals were served by all of the railroads except the following:

Bush Terminal Railroad Co.  
 Canadian National Railways (Great Lakes Region and St. Lawrence Region)  
 Canadian Pacific Ry. (Lines in Maine and Vermont)  
 East St. Louis Junction Railroad  
 Hannibal Connecting Railroad  
 Ironton Railroad Co.  
 Long Island Rail Road Co.  
 Mississippi Export Railroad Co.  
 Pittsburgh, Chartiers & Youghioghenny Ry.  
 Savannah & Atlanta R. Co.  
 St. Paul Union Depot Co.  
 Staten Island Rapid Transit R. Co.

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\* The identification herein of the carriers which did or did not serve the BLF&E with the said proposals is believed to be accurate, but the parties reserve the right to show otherwise if the issue should arise in some subsequent proceeding in this or some other case.

Shortly after January 31, 1966, the BLF&E responded to the railroads which served the said proposals, substantially in the form of Exhibit CC hereto; the railroads replied substantially in the form of Exhibit DD hereto; and the BLF&E further responded substantially in the form of Exhibit EE hereto or, substantially in the form of Exhibit FF hereto.

T. Prior to March 30, 1966 and within the time specified by Section 6 of the Railway Labor Act, conferences were held between the parties on many, if not all, of the railroads which served the said proposals on or about January 31, 1966, but no agreements were reached on the merits. Conferences have not been formally terminated with respect to such proposals, and neither the railroads concerned nor the BLF&E have applied to the National Mediation Board for mediation with respect to the merits of the proposals.

U. In the event that the Court rejects the contention that injunctive relief is barred by the Norris-La Guardia Act (29 U.S.C. §§101-113), the Judgment or Order to be entered by the Court after the trial on May 4, 1966 may include provisions for injunctive relief against the railroads or the BLF&E enforcing the determinations made by the Court; *provided*, however, that in hereby agreeing to the inclusion in the said Judgment or Order of provisions for injunctive relief in such circumstances the parties do not waive any objections they may have to the determinations made by the Court and reserve the right to object to the form of the said Judgment or Order on the ground that the provisions for injunctive relief are inadequate or otherwise are not properly related to enforcement of one or more of the determinations made by the Court.

V. This Stipulation, the exhibits hereto or referred to herein, and the pleadings shall constitute the entire record of the trial now scheduled to be held on May 4, 1966, except

for materials (including legislative history and hearings) of which judicial notice may be taken.

W. The parties hereto reserve the right to object to the relevancy or materiality of any of the facts and exhibits stipulated above and to take any position deemed to be appropriate with respect thereto within the issues set forth below.

## II. ISSUES

A. The following issues may be submitted by any party to the Court for determination in the trial now scheduled to be held on May 4, 1966:

1. Whether the rules governing the use of firemen (helpers) after the expiration of Section II of the Award by Arbitration Board No. 282 are the rules (including the provisions of the National Diesel Agreement) in existence prior to the effective date of the Award (as contended by the BLF&E), or those rules as modified by or pursuant to the Award (as contended by the railroads) or otherwise.
2. Whether the Section 6 notices served prior to the expiration of the Award and any proceedings with respect thereto were premature and ineffective.
3. Whether the railroads are required to bargain with the BLF&E over that portion of its proposals served on or about November 15, 1965 identified as Notice No. 2.
4. Whether the railroads referred to in Section I-C of this Stipulation were subject to Public Law 88-108 and the Award, and the status of the agreements entered into by certain of those railroads with the BLF&E.
5. Whether the Norris-La Guardia Act (29 U.S.C. §§ 101-113), or any part thereof, may apply to the dispute involved in this proceeding. The parties contemplate that this issue is to be argued and decided in the trial on May 4, 1966 as a matter of law. If it should be determined that

the Norris-La Guardia Act or some part thereof as a matter of law may apply to the dispute involved in this proceeding, the parties contemplate that a subsequent trial or hearing will be held to determine whether the requirements of the Norris-La Guardia Act or such part thereof have been complied with upon the basis of the evidence and other relevant circumstances brought before the Court at the subsequent trial or hearing.

B. The parties will not litigate in the above-entitled proceedings any issue that may exist between them as to whether the railroads are required to bargain with the BLF&E over that portion of its proposals served on or about November 15, 1966 identified as Notice No. 3 or any other issue as to the validity of the said portion of such proposals (other than the issue described in Section II-A-2 above), except as such issue or issues may arise in connection with the matters referred to in Sections II-C and/or Section II-D below, and none of the parties will contend in any other proceeding that any of the parties are barred from raising any such issue because it was not litigated in the above-entitled proceedings.

C. The parties contemplate that any proceedings claiming contempt growing out of the strikes by the BLF&E of certain of the railroads commencing on March 31, 1966, including proceedings for the imposition of the fines specified in the Order Adjudging the Brotherhood of Locomotive Firemen and Enginemen and H. E. Gilbert in Contempt and proceedings for the award of compensatory damages to the railroads involved, will be heard and determined at a time or times after the trial on May 4, 1966 to be fixed by the Court. The parties agree that the rights of any of the parties in such contempt proceedings, or appeal therefrom, shall not be prejudiced by the trial and determination of such proceedings after the trial on May 4, 1966 or by the judgment or order to be entered by the Court upon the basis of the trial on May 4, 1966 (except

insofar as that judgment or order may decide issues relevant to the contempt proceedings).

D. The parties contemplate that the counterclaim by the BLF&E in Civil Action No. 777-66 for damages (paragraph IV of the prayer for relief in said counterclaim) will not be heard or determined in the trial on May 4, 1966 and will be held in abeyance until the issue described in Section II-A-1 above is finally resolved. If the said counterclaim is not disposed of by the final determination of that issue, the parties contemplate that any other defenses which may be asserted by the railroads to such counterclaim and any evidence to be presented by the parties will be heard and any trial of such counterclaim will be held at a time or times after the issue described in Section II-A-1 above has been finally resolved.

Dated: April 30, 1966

RICHARD T. CONWAY

Attorney for plaintiffs in C. A.  
No. 777-66 and defendants in  
C. A. No. 784-66

JOSEPH L. RAUH, JR.

Attorney for defendant in C. A.  
No. 777-66 and plaintiff in  
C. A. No. 784-66



**Exhibit G**

Filed May 2, 1966

Civil Action No. 777-66

UNITED STATES OF AMERICA

: ss

DISTRICT OF COLUMBIA

Edward Jarrett, being first sworn, upon his oath deposes and says:

That he is the duly appointed Chief Clerk of the Committee on Commerce of the United States Senate, and as such is the custodian of the official minutes, files and records of said committee; that he served as such Chief Clerk on October 12, 1965, when said committee met in special executive session; that at said executive session, a majority of the committee being present and constituting a quorum as required by the Legislative Reorganization Act of 1946 (Public Law 601, 79th Congress), the said committee adopted the following resolution:

**"SENATE COMMITTEE ON COMMERCE  
RESOLUTION**

"To Further Provide for the Settlement of the Labor Dispute Between Certain Carriers by Railroad and Certain of their Employees.

WHEREAS, The Congress enacted S. J. Res. 102, which became Public Law 88-108, on August 28, 1963, establishing an arbitration board to make a binding award on the firemen (helper) dispute between certain carriers by railroad and certain of their employees; and

WHEREAS, Arbitration Board No. 282 established under the aforesaid law rendered its decision and award upon these issues on November 26, 1963; and

"WHEREAS, under the terms of Public Law 88-108, no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, could make any change except by agreement, or pursuant to the arbitration award provided under said law, or engage in any strike or lockout over any dispute as to such firemen (helpers) issue until on and after the expiration date established under such law by the arbitration board or by agreement of the parties; and

WHEREAS, within thirty days following the effective date of the Award, the parties under the Award were to establish a National Joint Board charged with responsibility for making a joint intensive and continuing study of the experience in road freight and yard service with and without the employment of firemen (helpers) during the period the Award remains in effect; and

WHEREAS, the Committee on Commerce in the exercise of its legislative oversight function held 18 days of hearings in August and September on the charges of the Brotherhood of Locomotive Firemen and Enginemen that Public Law 88-108 has not been administered properly; and

WHEREAS, in its Report to the Senate the Committee expressed its hope and desire that the parties could resolve their disputes by collective bargaining and noted the Committee's dislike for legislating solutions to labor-management disputes, and called attention to the obvious dangers of repeated congressional intervention in this field; and

"WHEREAS, the Department of Labor and the National Mediation Board witnesses urged the carriers and the brotherhoods to carry out their responsibilities to realistically and practically undertake collective bargaining in view of the paramount public interest.

RESOLVED BY THE SENATE COMMITTEE ON COMMERCE, That it is the sense of the Committee that the public interest

would be served by representatives of the firemen employees (the Brotherhood of Locomotive Firemen and Enginemen where they hold the contract, and the Brotherhood of Locomotive Engineers where they hold the contract) and the carriers undertaking collective bargaining.

Section 2. The Secretary of Labor and the National Mediation Board are requested to make their offices available to the parties to the extent needed to aid the parties in reaching agreement.

Notwithstanding any of the provisions of the resolution, the findings made by Arbitration Board No. 282 under Public Law 88-108 shall not be affected in any way."

Further affiant sayeth not.

EDWARD JARRETT

Subscribed and sworn to before me this second day of April, A.D. 1966.

WILLIAM A. RIDGELY  
Notary Public for the District  
of Columbia  
My Commission expires  
12-14-69

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**Exhibit H**

Filed May 2, 1966

Civil Action No. 777-66

NAME OF RAILROAD OFFICIAL

TITLE

NAME OF RAILROAD

Dear Sir:

In accordance with the provisions of the Railway Labor Act and the agreement or agreements now in effect on the ..... Railroad, please accept this as formal

notice of our desire to change the collectively bargained agreement governing the employment of firemen (helpers) on other than steam power to the extent provided in Attachment "A," attached to and made a part hereof, such change to become effective at 12:01 A.M., March 31, 1966.

This proposal is made to you, notwithstanding the fact that upon the expiration of the Award of Arbitration Board 282, the collectively bargained agreement with respect to employment of firemen (helpers) will be in full force and effect. We shall expect that on and after 12:01 A.M., March 31, 1966, you will comply fully with the collectively bargained agreement with respect to employment of firemen (helpers) on this property, unless another agreement has been reached in the meantime.

Please advise pursuant to Section 6 of the Railway Labor Act the time, date and place where conference may be held to discuss this notice.

Very truly yours,

General Chairman,  
Brotherhood of Locomotive  
Firemen and Enginemen  
Notice No. 1  
November 15, 1965  
Attachment "A"

*Section A:*

1. Firemen (helpers) taken from the seniority ranks of the firemen shall be used on all locomotives in road and yard service, except as specifically provided in Section B.

*Section B:*

1. DAYLIGHT YARD JOBS, other than those:

(a) Engaged in switching passenger cars and equipment, or

(b) Engaged in belt line, transfer, interchange or industrial work, or

(c) Which are consistently on duty more than eight (8) hours, or

(d) Whose operations are not confined to an area from which other engines operated without firemen (helpers) are excluded during the period the job works, or

(e) On which there is need for an employee on the locomotive to relay signals or perform lookout functions by reason of such conditions as curvatures of tracks, overhead or other obstructions, close clearances, unprotected crossings, dangers arising out of mainline movements, hazard to the public or railroad employees, or imposition on onerous working conditions on the engine or train crew.

2. DAYLIGHT BRANCH LINE JOBS, other than those where:

(a) The number of units in the locomotive consist exceeds one, or

(b) The total time on duty may be expected to exceed eight (8) hours, or

(c) The total miles run exceeds one hundred (100), or

(d) The maximum speed on branch line exceeds thirty (30) miles per hour, or

(e) The maximum number of cars in the train may be expected to exceed thirty-five (35), or

(f) The continuous movement of the train or engines exceeds two (2) hours without relief, or

(g) Onerous working conditions would be imposed on the members of the engine or train crew if a fireman was not used.

*Section C:*

1. Notwithstanding the provisions of Section B, a job may be operated without a fireman (helper) only when it becomes necessary to hire a fireman (helper).

2. A junior fireman (helper) may be required to protect jobs in Section B if same is necessary to avoid a new hire.

*Section D:*

1. The carrier shall hire and place on the firemen's seniority roster sufficient firemen (helpers) to comply with the provisions of this agreement.

Notice No. 2  
November 15, 1965

NAME OF RAILROAD OFFICIAL

TITLE

NAME OF RAILROAD

Dear Sir:

In accordance with the provisions of the Railway Labor Act and the agreement or agreements now in effect on the \_\_\_\_\_ Railroad, please accept this as formal notice of our desire to negotiate an agreement incorporating the provisions of Attachment "A," attached to and made a part hereof, such agreement to become effective at 12:01 A.M. March 31, 1966.

Please advise pursuant to Section 6 of the Railway Labor Act the time, date and place where conference may be held to discuss this notice.

Very truly yours,

General Chairman,  
Brotherhood of Locomotive  
Firemen and Enginemen

Notice No. 2  
November 15, 1965  
Attachment "A"

*Section A:*

Employees whose employment and seniority were terminated by the application or misapplication of the Award of Arbitration Board 282 will, on March 31, 1966, be recalled and restored to the seniority roster and employed with their original seniority date and used as firemen (helpers) in accordance with the agreement in effect on March 31, 1966. Employees restored to the seniority roster will be considered to have continuous service in the application of the vacation and other agreements. The railroad will, on or before March 31, 1966, by registered letter notify firemen (helpers) whose employment has been terminated by the railroad's application of the Award of Arbitration Board 282 at their last known address of the restoration of the individual's seniority. Failure of the individual to report for service within thirty (30) days of receipt of the registered letter will be considered to be a forfeiture of all seniority rights.

*Section B:*

Individuals restored to the seniority roster in the application of Section A hereof shall be reimbursed for any monetary loss sustained as result of improper termination.

*Section C:*

Employees who have been deprived of rights, during the term of the Award of Arbitration Board 282, to exercise their seniority in accordance with applicable schedule provisions in effect on January 24, 1964, will be reimbursed for all monetary losses sustained as a result of deprivation of such seniority rights.

*Section D:*

Employees who, as a result of the carrier's application of the Award of Arbitration Board 282, have incurred expenses such as, but not limited to, travel, lodging and meals in being required by the carrier to man assignments operating out of other than the point where their residence is maintained shall be reimbursed for such expenses.

*Section E:*

Employees who have experienced monetary loss as result of sale of their homes by reason of the carrier requiring such employees to man assignments at points other than where their original residence was maintained will be reimbursed for the loss incurred. Additionally, such employees will be reimbursed for moving expenses.

*Section F:*

Employees changing their point of residence as result of the carrier requiring such employees in the application of the Award of Arbitration Board 282 to man assignments out of points other than where original residence was maintained will be reimbursed for moving expenses.

Notice No. 3

November 15, 1965

NAME OF RAILROAD OFFICIAL

TITLE

NAME OF RAILROAD

Dear Sir:

In accordance with the provisions of the Railway Labor Act and the agreement or agreements now in effect on the \_\_\_\_\_ Railroad, please accept this as formal notice of our desire to negotiate an agreement incorporating the provisions of Attachment "A," attached to and made a part hereof, such agreement to become effective at 12:01 A.M., March 31, 1966.

Please advise pursuant to Section 6 of the Railway Labor Act the time, date and place where conference may be held to discuss this notice.

Very truly yours,

General Chairman,  
 Brotherhood of Locomotive  
 Firemen and Enginemen  
 Notice No. 3  
 November 15, 1965  
 Attachment "A"



## STANDARDS OF APPRENTICESHIP

FOR

## LOCOMOTIVE FIREMEN

Adopted for the Training of Railroad  
Locomotive Enginemen Apprentices  
by the

RAILROAD COMPANY

(Address)

and the

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN

## DEFINITIONS

As Used Herein:

"Company" means the \_\_\_\_\_ Railroad Company.

"Union" means the Brotherhood of Locomotive Firemen and Enginemen.

"Apprentice" means a person who is engaged in learning the craft of Locomotive Engineman.

"Committee" means the System Joint Apprenticeship Committee as established by these Standards of Apprenticeship.

"Local Committee" means the Joint Apprenticeship Committee as established by these Standards of Apprenticeship at the local level where apprentices are employed.

"Registration Agency" means the Bureau of Apprenticeship and Training, United States Department of Labor.

## A. SYSTEM JOINT APPRENTICESHIP COMMITTEE

The administrative body under these Standards shall be the System Joint Apprenticeship Committee which shall function as herein set forth. The Committee shall consist of 4 members, 2 appointed by the Company and 2 appointed

by the Union. Each member of the Committee shall serve until replaced by another appointee from his company or union.

The general chairman will represent the Union on the System Joint Apprenticeship Committee.

The System Committee shall elect a Chairman and a Secretary and determine time and place of regular meetings. When the Chairman is a representative from the Company, the Secretary shall be a representative from the Union and vice-versa.

The Chairman and Secretary shall have authority to vote on all questions.

The System Committee shall:

1. Hear and adjust differences pertaining to the apprenticeship program not resolved locally. In the event of unresolved issues after handling by the System Committee, provisions of the Railway Labor Act will be utilized.
2. Review progress of apprentices by reviewing work records of on-the-job and related technical instruction.
3. Assist in developing arrangements for the Apprentice to receive related technical instruction and on-the-job training.
4. Be the authority to certify that an Apprentice has completed his term of Apprenticeship and request that a Certificate of Completion of Apprenticeship be issued by the Registration Agency.
5. Maintain such records as are deemed necessary.
6. Be responsible for the successful operation of the Apprenticeship Program.

7. Provide for registration of the Apprenticeship program and the Apprentices with the Registration Agency.

#### B. LOCAL JOINT APPRENTICESHIP COMMITTEES

The Local Joint Apprenticeship Committee for each seniority district shall be composed of a representative from the Union (Local Chairman) and a designated Company representative. The Local Committee shall:

1. Coordinate training program on each seniority district.
2. Recommend improvements in training program.
3. Hear and adjust differences pertaining to the Apprenticeship Program. Unresolved issues are to be referred to the System Joint Apprenticeship Committee for handling.
4. Review progress of each apprentice in the seniority district as to related technical instruction and the on-the-job training.
5. Process copy of Apprenticeship Agreements to System Joint Apprenticeship Committee.

NOTE: To insure uniform and coordinated training program, all changes in the content and administration of the program are to be handled by the System Joint Apprenticeship Committee.

#### C. QUALIFICATIONS AND SELECTION FOR APPRENTICESHIP

Apprenticeship applicants must be able to meet the following requirements:

1. High school graduate or High School Equivalency Certificate.

2. Not less than 18 years of age and not over 27 years of age. (Exceptions may be made for the maximum age limit for applicants with previous engine service experience).
3. The use of application forms, aptitude tests, oral interviews, school records and previous work records will all be used in determining the qualifications of applicants for selection. The best qualified applicant will be chosen without regard to race, creed, color, sex, national origin or physical handicap, providing applicant meets all the required qualifications as stipulated by the Company. Selection will be on the basis of qualification alone and this program will be completely non-discriminatory.
4. Applicants will be required to pass mental and physical examinations, as well as mechanical aptitude tests as required by Company regulations.
5. Information regarding apprenticeship opportunities shall be publicly disseminated. Local state employment service offices, as well as schools, may be utilized to effect this dissemination, as will other media.
6. As apprentice openings occur, candidate applications will be recorded and applicants may be referred to agencies for aptitude testing and grading.

Applicants achieving qualifying scores will be interviewed by the Company as to educational background, work attitude, personal responsibility, physical condition and other factors.

Qualified applicants will be rated and selection for openings shall be from the results of testings and interviews. The highest-rated or most qualified applicant shall be selected for the opening.

Records of the selection process shall be kept for two years.

7. Engine service employees, presently employed, may be placed under the apprenticeship program as apprentices. When presently employed applicants are selected, the selection shall be completely on a non-discriminatory basis. Employment of those presently employed was made on a completely non-discriminatory basis.
8. A basis for grading of applicants will be used to determine best qualified applicant, based on the following table, and selection shall be made in descending order of ranking.

<i>Subject</i>	<i>Maximum</i>	<i>Minimum</i>
Education	20	10
Physical Fitness	15	15
Aptitude Tests	15	10
Oral Interview	20	10
Work Experience	20	10
Veteran Preference	5	0
References	5	5
Total	100 points	60 points

NOTE: Minimum requirement for qualification under the scoring system of the above table is 60 points. Also note that the same points are given for minimum and maximum on *physical fitness*, this due to the stringent physical requirements necessary for engine service employees because of the responsibility involved handling expensive equipment, human lives and shipments.

#### D. TERM OF APPRENTICESHIP

1. The term of apprenticeship shall be not less than three (3) years (36) months.

2. When the apprentice has had previous experience in the craft, the System Joint Apprenticeship Committee may evaluate such experience and recommend credit toward the term of apprenticeship and he shall be placed at the proper level on the pay scale according to the length of credit given.

3. *(a) First Period (Nine Months)*

Upon completion of the first period of apprenticeship, the apprentice will be given a written examination as prepared by the Company and approved by the Union. This examination will cover Company transportation rules, as well as related technical instruction, hostling of locomotives and general operating procedures required of apprentice locomotive enginemen.

An apprentice failing to pass the examination shall be given a second opportunity to pass within three months.

An apprentice failing to pass the examination the second time shall automatically be dismissed from the program and employment status terminated.

An apprentice upon having successfully passed the examination shall advance to the second period of the apprenticeship term.

- (b) Second Period (Nine Months)*

Upon completion of the second period, the apprentice will be given a written and oral examination prepared by the Company and approved by the Union, covering subjects given during the period both on-the-job and in related instruction classes. This examination will also include review of transportation and safety rules as designated by the Company and approved by the Union.

Apprentice failing to pass this examination shall be given another opportunity to pass the examination

within three months. An apprentice failing the examination the second time shall be dismissed from the program and his employment status terminated.

The apprentice upon having successfully passed the examination shall advance to the third period of the apprenticeship term.

*(c) Third Period (Eighteen Months)*

Upon completion of the third period, the apprentice will be given a final examination prepared by the Company and approved by the Union. This examination will cover all previous subjects during the apprenticeship term including related technical instruction and on-the-job training. Such examination will include questions on air brakes, locomotive machinery, electricity, safety rules and operating rules.

An apprentice failing to pass this final examination will be given a second examination within three months. Failing the second examination he will be given a third examination within three months in the presence of his representative if he so desires. Failing to satisfactorily pass the third examination the apprentice will have his employment status with the Company terminated.

4. No apprentice shall be deprived of employment rights on account of failure to take examinations because of illness, authorized absence or requirements of the railroad's service, provided that the apprentice shall, within ten days of return to service or relief from service, make written request for examination.

**E. CREDIT FOR PREVIOUS EXPERIENCE**

Apprentices who have been awarded credit for previous experience shall be paid, upon entrance, the wage rate for the period to which such credit advances them.

## F. RATIO

The ratio of apprentices to Locomotive Enginemen shall be subject to the requirements of the needs of the Company in relationship to the current bargaining contract.

An apprentice will be given a seniority date which will coincide with the date his application is accepted as an apprentice by the carrier with the understanding that seniority date will be retained as long as he passes the required examinations.

Appeals concerning seniority date shall be in writing to the designated company official and the general chairman, such appeal to be made within sixty (60) days following date apprentice is notified of standing on seniority roster.

Apprentices shall be allowed to exercise their seniority with the understanding that in so doing they will meet the requirements set forth in this training program relative to their gaining experience in various classes of service.

## G. WAGES

Wages paid apprentices shall be shown in the Appendices of these Standards. Any change of wage scale made in the current bargaining agreement shall automatically be reflected in the wage scale of the apprenticeship program.

## II. HOURS OF WORK

The work day for an apprentice shall be the same as that of the engineer and/or fireman with whom he is working and subject to the rules of the current bargaining contract.

An apprentice shall be under the supervision of a competent engineer and/or fireman or supervisor at all times.

## I. RELATED INSTRUCTION

1. Each apprentice shall attend instructional sessions on related technical subjects for approximately 144 hours per year during each year of the apprenticeship.



2. The Company shall furnish each apprentice locomotive manuals, related texts and supplies in order that the Apprentice may acquire technical information to aid him in passing examinations at the end of each period of the term of apprenticeship.
3. The apprentice will be given classroom instruction on all phases of engine service work requirements, including basic principles of electricity, diesel-electric locomotive principles, trouble shooting on locomotives, company safety rules and regulations, company operating rules and regulations, steam generator equipment operation and air brake systems.

#### J. WORK PROCESSES

During the apprenticeship, the apprentice shall receive such instruction and experience in all branches of the craft as is necessary to develop a practical and versatile locomotive engineman, versed in the theory and practice of the craft. (See Appendices)

#### K. EXAMINATION OF APPRENTICES

As previously noted, an examination is to be given the apprentice at the completion of each period in order for the apprentice to progress to the next period of the term of apprenticeship.

As outlined, in the event the apprentice fails to successfully pass the examination, he shall automatically be dismissed from the program and his employment status terminated.

#### L. SUPERVISION OF APPRENTICES

The Company shall designate a particular person as System Supervisor for Apprentices. The Company shall also designate a particular person as Local Supervisor of Apprentices wherever a Local Joint Apprenticeship Committee

is established. These persons shall be responsible for carrying out the training program as outlined in these Standards. Adequate records of the apprentice's on-the-job training and related technical instruction shall be maintained and submitted to the System or Local Joint Apprenticeship Committee upon request.

#### M. COMPLETION OF APPRENTICESHIP

Upon successful completion of the term of apprenticeship, the System Joint Apprenticeship Committee shall recommend to the Registration Agency, in writing, that the apprentice be issued a Certificate of Completion of Apprenticeship.

#### N. ADJUSTMENT OF DIFFERENCES

In the event differences arise regarding the operation of the program under these Standards, either party may appeal to the Local Joint Apprenticeship Committee and then to the System Joint Apprenticeship Committee, if necessary, for the settlement of such differences.

In the event the System Joint Apprenticeship Committee is unable to resolve a difference arising out of the application of the apprenticeship program under these Standards and related bargaining agreements, the provisions of the Railway Labor Act shall be utilized.

#### O. MODIFICATION OF STANDARDS

Any modification or change in these Standards shall be submitted by the System Joint Apprenticeship Committee to the Registration Agency for approval.

Such modification shall not alter an apprentice agreement in force at the time of such change without the consent of all parties concerned.

#### P. SPECIAL PROVISIONS

Nothing in these Standards shall conflict in any way with the terms of the bargaining agreement between the Company and the Union.

Where the term "apprentice" appears in this agreement, it is synonymous with the term "fireman" as it appears in the current agreements between Chesapeake and Ohio Railway Company and its employees represented by the Brotherhood of Locomotive Firemen and Enginemen.

All engine service employees hired subsequent to agreement implementing this apprenticeship program will be required to complete the training set forth herein, except as provided in D-2.

Apprentices who have completed this training shall receive a seniority date as locomotive engineer in keeping with the appropriate provisions of the current agreement on the Chesapeake and Ohio Railway Company.

#### Q. SAFETY

Each apprentice shall be provided with initial indoctrination and instruction to enable him to perform his work in a safe manner.

Initial indoctrination shall include instruction concerning rules and regulations pertinent to Company safety regulations, reporting of accidents and availability of first-aid medical facilities both on the locomotives and at terminal points.

The Company shall at all times exercise reasonable precaution for the health and safety of the apprentices engaged in the performance of the work herein described on work processes. The Company shall comply with all applicable provisions of Federal, State and municipal safety, health and sanitation statutes and codes.

The Company operating through the Apprentice Supervisors and/or instructors shall provide training and instruction pertaining to safe work habits to insure that the apprentice will be protected against avoidable accidents. The apprentices will be instructed in the methods necessary to perform all phases of the work in a safe manner.

#### R. CONSULTANTS

Consultants will be invited to attend and participate in System Joint Apprenticeship Committee meetings with voice but no vote on all matters. The Bureau of Apprenticeship and Training, U. S. Department of Labor, is the recognized consulting agency to this program.

#### APPENDIX A

##### .....RAILROAD COMPANY

.....  
.....

Craft: Railroad Locomotive Engineman Term of Apprenticeship: 3 years

Wages: 1st Period—9 Months...80% of Locomotive Fireman's wages applicable for job assigned.

2nd Period—9 Months...90% of Locomotive Fireman's wages applicable for job assigned.

3rd Period—18 Months...100% of Locomotive Fireman's wages applicable for job assigned.

Apprentices attending classes, completing student trips and/or taking examinations will be allowed 80% of the applicable daily yard rate based on the 300,000-350,000 lb. locomotive on a five day week basis for each day involved.

In addition, apprentices will be provided with or reimbursed for transportation, meals and lodging when required to leave their home terminal, attending classes, completing student trips and/or taking examinations.

NOTE: Due to the complexity of the wage scales for Locomotive Engine Service employees, it is impossible to specify an exact figure as the wage scales. These will be varying daily due to the assignment of the apprentice. When the apprentice has successfully completed the term of apprenticeship and has passed the final examination, he then will be qualified as a railroad locomotive engineer and will receive a seniority date as locomotive engineer in keeping with the appropriate provisions of the current agreement.

## APPENDIX B

### *Work Experience:*

During the term of apprenticeship, the apprentice shall be given such instruction and experience to develop the skills and knowledge necessary for complete mastery of the craft. The training of apprentices shall include the following work units, but not necessarily in the sequence listed. It is understood and agreed that the apprentice shall transfer from one operation to another as soon as his proficiency permits him to do so.

### *Work Processes*

### *Approximate Time*

#### INITIAL PERIOD

9 Months

A. During this period, apprentice will make student locomotive fireman trips as observer, as follows:

One (1) round trip on passenger train locomotive if operated on that railroad division.

One (1) round trip on freight train locomotive.

Two (2) shifts on yard service locomotive.

NOTE: Above student trips then allows apprentice to perform work in this locomotive classification.

- B. Road Trips—Passenger (if available)  
Road Trips—Freight  
Yard Work at terminals
- C. Hostling Service (This term applies to duties where it becomes necessary to move locomotives in and around maintenance shops, depots, yards, etc., where locomotives are not attached to railroad cars for train movement.)

An apprentice will be required to work with an experienced employee (hostler) until he is sufficiently familiar with all details of the track location and duties pertaining to his assignment. When he assumes assignment as hostler, he will be under supervision.

During all of the above work, the apprentice will learn duties of the assignment as to train and engine movement, reading of signals and train orders, operation and trouble shooting on the motive power to which he is assigned.

#### SECOND PERIOD

9 Months

During this period the apprentice will take assigned duties in all classifications of engine service work and will devote full time and energy to rules, equipment familiarization, and train and engine operation. He will perform all duties commonly referred to as Locomotive Fireman duties.

**Exhibit I**

Filed May 2, 1966

Civil Action No. 777-66

Mr. (General Chairman)

.....  
.....  
.....

Dear Sir:

This acknowledges receipt of your combination proposal dated November 15, 1965, served in the form of "Notice No. 1" and "Attachment A" thereto, "Notice No. 2" and "Attachment A" thereto, and "Notice No. 3" and "Attachment A" thereto.

I am agreeable to a meeting with you at the time and place suggested below; however, I must advise you that in my opinion your proposal and each of the several parts thereof are improper and inappropriate subjects for collective bargaining. It is my position, therefore, that the progression of such proposal would be unlawful.

If I correctly understand the second paragraph of the document designated "Notice No. 1," you are advancing the argument that upon expiration of the Arbitration Award the carriers should revert to the manning practices that prevailed before the Award became effective. I do not believe the occasion warrants extended discussion of this matter or of your reasons for incorporating the argument in what purports to be a Section 6 Notice under the Railway Labor Act. However, I hereby advise you that it is our position that all of the terms, conditions, practices and procedures established pursuant to the Award of Arbitration Board 282 are incorporated in the collective agreement and continue in effect unless and until changed in accordance with the Railway Labor Act after the Award itself expires.

I will not in this reply attempt to catalogue all of the objectionable features of the proposal itself, but there are a number of fundamental considerations as to which I wish our position to be clearly understood. The entire proposal and each of its components clearly relate directly to the subject matter of that part of the Award of Arbitration Board No. 282 which resolved the dispute over the use of firemen. As you are aware, the termination date of the procedural provisions of Award 282 is March 31, 1966; thus, your proposal to alter the terms, conditions, practices and procedures established pursuant thereto by conducting negotiations prior to April 1, 1966, is premature and violates the letter and spirit of the Award and Public Law 88-108. In a similar respect, the proposal is inconsistent with the purposes of that part of the Award which calls for creation of the National Joint Board.

There are a number of other respects in which the proposal is inconsistent with law, violates public policy, and advances requests that are not proper subjects for mandatory collective bargaining, some of which are the following:

It seeks to bargain and obtain benefits for persons not employed by the carrier and for employees of the carrier not represented by your organization for collective bargaining purposes. It seeks to penalize the carrier by requiring it to recompense individuals for supposed losses incurred as the result of enforcement of a Public Law. It proposes creation of a new craft or class of employees and would improperly influence the designation of the bargaining representative for certain classes or crafts of employees. It would subject to collective bargaining the carrier's hiring criteria and promotional qualifications. In addition to the nonbargainable character of the proposal for the reasons outlined, and for other reasons, the proposal in certain of its aspects is violative of the moratorium provisions of the agreement between the carriers and your organization dated December 2, 1964.



In the event that notwithstanding the foregoing you desire a conference so that you will have a more clear understanding of our position respecting your notice, I am prepared to meet with you at ..... on..... If this time and place are not convenient, please so advise, suggesting an alternative.

Without waiving the carrier's position as previously outlined as to the prematurity, unlawfulness and nonbargainability of your requests, the carrier reserves the right to file such proposals as it may consider appropriate for concurrent handling with your requests if or when it should be subsequently determined either prior or subsequent to March 31, 1966, that any part of your requests may properly be progressed.

Very truly yours,

**Exhibit J**

Filed May 2, 1966

Civil Action No. 777-66

**NATIONAL MEDIATION BOARD**

**WASHINGTON, D.C. 20572**

**February 14, 1966**

**Case No. A-7701**

Mr. W. S. Scholl  
Director of Personnel  
Louisville & Nashville Railroad Co.  
908 W. Broadway  
Louisville, Kentucky

Mr. H. E. Gilbert, President  
Brotherhood of Locomotive Firemen & Enginemen  
15401 Detroit Avenue  
Cleveland, Ohio 44107

Gentlemen:

Reference is made to application for the mediation services of this Board, in a dispute between your respective carrier and organization, described as follows:

"Section 6 notice of November 15, 1965, for an agreement or changes in existing agreements providing for the employment of firemen (helpers) on locomotives in yard and road service."

This application has been docketed as our Case No. A-7701 and will hereafter be referred to by that number. A mediator will be assigned to mediate this dispute consistent with prior commitments.

Very truly your,

Thomas A. Tracy  
Executive Secretary

PLEASE MAKE SUBMISSION AND REPLIES TO CORRESPONDENCE  
IN DUPLICATE

**EXHIBIT 8**

**Exhibit K**

Filed May 2, 1966

Civil Action No. 777-66

**NATIONAL MEDIATION BOARD**

**WASHINGTON, D.C. 20572**

**February 14, 1966**

Mr. W. S. Scholl  
Director of Personnel  
Louisville and Nashville Railroad Company  
908 W. Broadway  
Louisville 1, Kentucky

Mr. H. E. Gilbert  
President  
Brotherhood of Locomotive Firemen and Enginemen  
15401 Detroit Avenue  
Cleveland, Ohio 44107

Gentlemen:

Reference is made to the application received from the Brotherhood of Locomotive Firemen and Enginemen for the mediation services of this Board in a dispute with the Louisville and Nashville Railroad Company on the subject:

"Section 6 notice of November 15, 1965, for an agreement providing for the recall and restoration of seniority rights of those firemen (helpers) whose employment and seniority were terminated by the application or misapplication of the Award of Arbitration Board No. 282; and providing for reimbursement for such monetary losses sustained as a result of improper termination, inconvenience, or deprivation of seniority rights."

Attached for Mr. Gilbert's information is a copy of Mr. Scholl's letter dated January 28, 1966, in response to our request for information in regard to this application. You

will note that the carrier takes the position that the Board should reject the organization's application on the basis that its proposals are premature, unlawful, and non-bargainable.

The Board, after review of the entire file, has determined that a hearing should be held in order to afford the parties full opportunity to present their views and contentions as to whether the Board should docket this application.

EXHIBIT 9

The time and place for the hearing will be announced at a later date.

Sincerely yours,

Thomas A. Tracy  
Executive Secretary

---

**Exhibit L**

Filed May 2, 1966

Civil Action No. 777-66

NATIONAL MEDIATION BOARD  
WASHINGTON, D.C. 20572

February 14, 1966

Mr. W. S. Scholl, Director of Personnel  
Louisville & Nashville Railroad Company  
908 W. Broadway  
Louisville 1, Kentucky

Dear Mr. Scholl:

This will acknowledge your letter of January 28, 1966, referring to an application for mediation from the Brotherhood of Locomotive Firemen and Enginemen covering a

dispute between that organization and the Louisville & Nashville Railroad Company on the following subject:

"Section 6 notice of March 25, 1965 for an agreement providing for a uniform, progressive training program for firemen (helpers) in the operation, maintenance and inspection enroute or in service of all types of motive power and in safety of operations, jointly administered."

In reviewing the correspondence attached to your letter, it is noted that you have taken the position that the notice covered by this application is not proper under the provisions of the Railway Labor Act, and that the request deals broadly with the program for all *engine* service employees, including classes not presently represented by the Brotherhood of Locomotive Firemen and Enginemen.

We would appreciate any additional information which you would care to furnish indicating the basis for your position that the request deals with classes not presently represented by the Brotherhood of Locomotive Firemen and Enginemen.

For Mr. Gilbert's information, there is attached hereto a copy of your letter of January 28, 1966.

Sincerely yours,

Thomas A. Tracy  
Executive Secretary

Enclosure

cc: H. E. Gilbert, President-BLF&E

EXHIBIT 10

171

**Exhibit M**

Filed May 2, 1966

Civil Action No. 777-66

**WESTERN UNION  
TELEGRAM**

1966 APR 6 PM 3 37

UTA045 (34)(27)CTB4

3

: : 5 2 312 PD

WASHINGTON DC 345PEST

J E WOLFE CHAIRMAN NATL RWY LABOR CONF

ROOM 474 UNION STATION 517 WEST ADAMS ST CHGO

MEDIATOR LAWRENCE FARMER WILL BE AT THE HOLIDAY INN  
AKRON OHIO TUESDAY 4-19 TO COMMENCE MEDIATION OF CASE  
A-7743 BLF&E AND AKRON CANTON & YOUNGSTOWN RAILROAD  
PLEASE ADVISE WHO WILL REPRESENT YOU JOINT WOLFE  
HOCHBERG ORAM AND GILBERT

THOMAS A TRACY EXECUTIVE SECY NATIONAL MEDIATION  
BOARD

**WESTERN UNION  
TELEGRAM**

1966 APR 6 PM 3 48

UTA047 (40)(28)PA284

C P WB063 PD 2 EXTRA

FAX WASHINGTON DC 6 335P EST

JE WOLFE, CHAIRMAN

NATIONAL RAILWAY LABOR CONFERENCE

ROOM 474, UNION STA 517 WST ADAMS ST CHGO 60606

MEDIATOR A. ALFRED DELLA CORTE WILL BE AT THE EMERSON  
HOTEL, BALTIMORE, MARYLAND, TUESDAY, 4-19, TO COMMENCE  
MEDIATION OF CASES A-7746. BLF&E AND BALTIMORE & OHIO  
RAILROAD, AND A-7746-SUB 1, BLF&E AND B&O (BUFFALO DIV.).  
PLEASE ADVISE WHO WILL REPRESENT YOU. JOINT WOLFE,  
SCHULER, ORAM AND GILBERT

THOMAS A TRACY EXECUTIVE SECRETARY NATIONAL MEDIA-  
TION BOARD

4-19 —7746 BLF&E A-7746-SUB 1 BLF&E B&O.

172

**Exhibit N**

Filed May 2, 1966

Civil Action No. 777-66

**WESTERN UNION  
TELEGRAM**

1966 APR 6 PM 3 49

UTA050 (44)(36)CTB445

C CT WA322 PD

WASHINGTON DC 6 NFT

J E WOLFE CHAIRMAN NATL RWY LAB CONF

ROOM 474 UNION STATION 517 WEST ADAMS ST CHGO

MEDIATOR ARTHUR J GLOVER WILL BE AT THE NLAZA HOTEL  
ROANOKE VIRGINIA TUESDAY 4-19 TO COMMENCE MEDIATION  
OF CASES A-7747 BLF&E AND NORFOLK & WESTERN RAILWAY  
AND A-7747 SUB 2 BLF&E AND N&W (VIRGINIAN DIST) PLEASE  
ADVISE WHO WILL REPRESENT YOU.

JOINT WOLFE DAY MACGILL AND GILBERT

THOMAS A TRACY EXECUTIVE SECY NATIONAL MEDIATION  
BOAHSE

HUR AQ A-774

---

**Exhibit P**

Filed May 2, 1966

Civil Action No. 777-66

**WESTERN UNION  
TELEGRAM**

F-MD GOVT.PD.

4:45PM.

NATIONAL MEDIATION BOARD

STRAIGHT WIRE

April 12, 1966

H. E. GILBERT, PRESIDENT

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN  
15401 DETROIT AVENUE, CLEVELAND, OHIO 44107

FOR YOUR INFORMATION AND COMMENTS FOLLOWING WIRE  
RECEIVED THIS DATE FROM J. E. WOLFE, CHAIRMAN, NRLC:  
"YOUR WESTERN UNION TELEGRAMS OF APRIL 6 RE CASES  
A-7746 BLF&E AND BALTIMORE AND OHIO RAILROAD, A-7746  
SUB. 1 BLF&E AND BALTIMORE AND OHIO RAILROAD (BUFFALO  
DIVISION), A-7743 BLF&E AND AKRON, CANTON AND YOUNGS-  
TOWN RAILROAD, A-7747 BLF&E AND NORFOLK AND WESTERN

RAILWAY AND A-7747 SUB 2. BLF&E AND NORFOLK AND WESTERN RAILWAY (VIRGINIAN DISTRICT). THE NOTICE SERVED UNDER SECTION SIX OF THE RAILWAY LABOR ACT BY BLF&E ON OR ABOUT NOVEMBER 15, 1965 WAS A THREE PART NOTICE INVOLVING CERTAIN DEMANDS WHICH THE CARRIER CONTENDS ARE NOT BARGAINABLE SUBJECTS. AS TO THAT PART OF THE NOTICE IDENTIFIED AS PART TWO, FILE NO. C-3654 FOR PURPOSES OF IDENTIFICATION, TRACY STATED IN LETTER DATED MARCH 31 THAT A HEARING WOULD BE HAD AT WHICH PARTIES WOULD HAVE FULL OPPORTUNITY TO PRESENT THEIR VIEWS AND CONTENTIONS AS TO WHETHER THIS PART OF THE APPLICATIONS FOR MEDIATION SHOULD BE DOCKETED. IT IS NOT PRACTICABLE TO NEGOTIATE ON PART ONE OF THE NOVEMBER 15 SECTION 6 NOTICE UNTIL THE PARTIES HAVE KNOWLEDGE AS TO WHAT WILL BE DONE WITH PARTS TWO AND THREE OF SAID NOTICE. MOREOVER THE BARGAINABILITY ISSUES WILL BE THE SUBJECT OF LITIGATION WHICH WE WILL ATTEMPT TO EXPEDITE. UNDER THESE CIRCUMSTANCES CONSTRUCTIVE MEDIATION IS NOT POSSIBLE. THE QUESTION OF THE PREMATURITY OF THE NOVEMBER 15 SECTION 6 NOTICE IS IN LITIGATION AND WILL SOON BE DECIDED. THIS IS ANOTHER BARRIER TO CONSTRUCTIVE MEDIATION. THEREFORE NATIONAL RAILWAY LABOR CONFERENCE AND APPROPRIATE CARRIERS' CONFERENCE COMMITTEES WILL NOT PARTICIPATE IN THE MEDIATION PROCEEDINGS REFERRED TO IN THE SEVERAL WESTERN UNION TELEGRAMS HEREIN REFERRED."

THOMAS A. TRACY, EXECUTIVE SECRETARY  
NATIONAL MEDIATION BOARD

4-emc

---

**Exhibit Q**

Filed May 2, 1966  
Civil Action No. 777-66

**WESTERN UNION  
TELEGRAM**

1966 APR 15 AM 11 15

UTA007 (37)(26) PA119  
P WA 224 DL PD FAX WASHINGTON DC 15 1037A EST  
J E WOLFE, CHAIRMAN NATIONAL RAILWAY LABOR CONFERENCE  
ROOM 474 UNION STATION CHGO

FOR YOUR INFORMATION FOLLOWING RECEIVED FROM H. E. GILBERT, PRESIDENT BLF&E QUOTE: THIS RESPONDS TO YOUR TELEGRAM OF APRIL 12 QUOTING WIRE RECEIVED FROM MR. L. E. WOLFE REFERRING TO CASES A-7746 BLF&E AND BALTIMORE AND OHIO RAILROAD A-7746 SUB 1 BLF&E & BALTIMORE



& OHIO (BUFFALO DIVISION), A-7743 BLF&E AND AKRON, CANTON AND YOUNGSTOWN RAILROAD, A-7747 BLF&E AND NORFOLK AND WESTERN RAILWAY AND A-7747 SUB 2 BLF&E AND NORFOLK AND WESTERN RAILWAY (VIRGINIA DISTRICT). MR. WOLFE HAS INFORMED YOU CATEGORICALLY THAT THE CARRIERS WILL NOT PARTICIPATE IN THE MEDIATION PROCEEDINGS REFERRED TO. YOU HAVE REQUESTED MY COMMENTS. CONTRARY TO THE STATEMENT MADE BY MR. WOLFE IN HIS WIRE, THE BLF&E ON NOVEMBER 15, 1965, SERVED THREE SEPARATE NOTICES, AND NOT A SINGLE NOTICE OF THREE PARTS AS MR. WOLFE STATES. THE NOTICE INVOLVED IN THE CASES LISTED ABOVE, WHICH WE HAVE DESIGNATED AS NOTICE NO. 1, WAS DESCRIBED IN OUR SEVERAL APPLICATIONS FOR MEDIATION AS FOLLOWS: "SECTION 6 NOTICE OF NOVEMBER 15, 1965, FOR AN AGREEMENT FOR CHANGES IN EXISTING AGREEMENTS PROVIDING FOR THE EMPLOYMENT OF FIREMEN (HELPERS) ON LOCOMOTIVES IN YARD AND ROAD SERVICE." THE BOARD HAS CORRECTLY ASSIGNED INDIVIDUAL DOCKET NUMBERS TO OUR INVOCATIONS ON NOTICE NO. 1 AND DIFFERENT DOCKET NUMBERS ON OTHER NOTICES SERVED ON THE SAME DATE. OUR SEPARATE NOVEMBER 15 NOTICES WERE SERVED PURSUANT TO THE RESOLUTION OF THE SENATE COMMITTEE ON COMMERCE DATED OCTOBER 12, 1965, AS WELL AS IN DISCHARGE OF DUTIES AND RESPONSIBILITIES PRESCRIBED IN THE RAILWAY LABOR ACT. ON APRIL 3 I RECEIVED A TELEGRAM FROM THE PRESIDENT OF THE UNITED STATES DEALING WITH OUR RECENT STRIKE SITUATION. IN THAT WIRE THE PRESIDENT SAID IN PART: "WHATEVER ISSUE OR ISSUES MAY BE IN DISPUTE SHOULD BE RESOLVED BY NEGOTIATIONS UNDER PROCEDURES OF THE RAILWAY LABOR ACT. THE PROCEDURES OF THIS ACT CAN AND SHOULD OPERATE PROMPTLY AND EFFECTIVELY AND WILL AS SOON AS WORK IS RESUMED." SECTION 5 OF THE RAILWAY LABOR ACT PROVIDES THAT WHEN THE SERVICES OF THE MEDIATION BOARD ARE INVOKED THE "BOARD SHALL PROMPTLY PUT ITSELF IN COMMUNICATION WITH THE PARTIES TO SUCH CONTROVERSY AND SHALL USE ITS BEST EFFORTS, BY MEDIATION, TO BRING THEM TO AGREEMENT." THE RAILROADS HAVE THROUGH LITIGATION CONTINUALLY AND REPEATEDLY PLACED OBSTACLES IN THE WAY OF SETTLEMENT OF THIS CONTROVERSY THROUGH NORMAL PROCEDURES OF THE RAILWAY LABOR ACT. THE QUOTED TELEGRAM FROM MR. WOLFE IS BUT AN ADDITIONAL MANIFESTATION OF THE CARRIERS' DEFIANCE OF THE SENATE COMMITTEE RESOLUTION AND OF THE CARRIERS' EFFORTS TO FRUSTRATE THE PROCEDURES OF THE ACT AND THE DISCHARGE BY THE MEDIATION BOARD OF ITS DUTIES UNDER THE ACT. THE RAILWAY LABOR ACT SPECIFICALLY COMMANDS PURSUIT OF THE PROCEDURES OF THE ACT FOR SETTLEMENT OF LABOR CONTROVERSIES AND THE COURTS HAVE BEEN GIVEN NO JURIS-

DICTION IN THIS AND MANY OTHER CONNECTIONS. THE EXCUSES OFFERED BY MR. WOLFE OF THE PENDENCY OF SOME MATTERS IN THE COURTS ARE INSUFFICIENT TO JUSTIFY HIS FLOUTING THE COMMANDS OF THE LAW BY REFUSAL TO PARTICIPATE IN MEDIATION. DECISIONS OF THE SUPREME COURT OF THE UNITED STATES HANDED DOWN MORE THAN TWENTY YEARS AGO HOLD THAT THE COURTS MUST KEEP THEIR HANDS OFF THE SETTLEMENT OF RAILWAY LABOR CONTROVERSIES. I HAVE ALREADY NOTIFIED THE MEDIATION BOARD THAT OUR OFFICERS WILL MEET WITH THE MEDIATORS ASSIGNED BY THE MEDIATION BOARD ON THE RAILROAD PROPERTIES NAMED ABOVE AT THE TIME AND PLACE OF WHICH WE HAVE BEEN NOTIFIED BY THE BOARD. THIS WILL CONFIRM PREVIOUS ADVICES TO THE BOARD. OUR OFFICERS WILL BE ON THE PROPERTIES READY TO PROCEED IN MEDIATION AT THE TIME AND PLACE YOU FIXED. COPY SUPPLIED W WILLARD WIRTZ AND WARREN G MAGNUSON UNQUOTE

THOMAS A TRACY EXEC SECY NATIONAL MEDIATION BOARD  
12 A-7746 A-77461 A-7743 A-7747 A-7747 2 15 1965 16 15 1965 6 1 15 12  
1965 3 5

(21).

### Exhibit R

Filed May 2, 1966  
Civil Action No. 777-66

### WESTERN UNION TELEGRAM

1966 APR 15 PM 7 24

LLC685 (52)(44)AA412

C A WA473 GOVT PD

FAXSWASHINGTON DC 15 450P EST

J E WOLFE, CHAIRMAN NATIONAL RAILWAY LABOR CONFERENCE

517 WEST ADAMS ST RM 474 UNION STATION CHGO

RE EXCHANGE OF TELEGRAMS SETTING FOR MEDIATION CASES LISTED IN BLF&E WIRE 4-15-66. BOARD HAS CAREFULLY CONSIDERED ALL STATEMENTS. MEDIATION WAS SET INVOLVING ONE OF THE THREE SEPARATE NOTICES REFERRED TO. THE NATIONAL RAILWAY LABOR CONFERENCE, IN THE MEANTIME, ALLEGES THAT IT HAS PUT IN ISSUE BEFORE THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA THE PROPRIETY AND LEGALITY OF COMMENCING MEDIATION AT THIS TIME BASED UPON THE PRESENT CIRCUMSTANCES. THE BOARD, AFTER CONSIDERING THE POSITIONS OF THE RESPECTIVE PARTIES, FEELS THAT NO USEFUL PUR-

POSE WOULD BE SERVED IN ATTEMPTING TO ANTICIPATE THE COURT DETERMINATION, IMMEDIATELY SUBSEQUENT TO DECISION, THE BOARD WILL PROCEED ACCORDINGLY. BY DIRECTION OF THE NATIONAL MEDIATION BOARD. ORIGINAL GILBERT, COPY WOLFE

THOMAS A TRACY EXECUTIVE SECRETARY NATIONAL MEDIATION BOARD  
BLF&E 4-15-66.

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**Exhibit S**

Filed May 2, 1966

Civil Action No. 777-66

**WESTERN UNION  
TELEGRAM**

1966 APR 15 PM 7 57

LLH125 (14)(13)CTA 624

C CT WA 495 PD

FAX WASHINGTON DC 15 436P EST

J E WOLF, CHAIRMAN NATL RAILWAY LABOR CONFERENCE  
RM 474 UNION STATION 517 WEST ADAMS ST CHGO

MEDIATION OF CASE A-7743, BLF&E AND AKRON, CANTON AND YOUNGSTOWN RAILROAD, SCHEDULED FOR APRIL 19TH IS HERE-BY CANCELLED. JOINT WOLFE, HOCHBERG, ORAM AND GILBERT, COPY FARMER.

THOMAS A TRACY, EXECUTIVE SEC NATL MEDIATION BOARD  
A-7743 19TH.  
(15).

177

**Exhibit T**

Filed May 2, 1966

Civil Action No. 777-66

**WESTERN UNION  
TELEGRAM**

1966 APR 15 PM 6 00

LLD636 (45) (20) PA330

P WA458 PD FAX WASHINGTON DC 15 504P EST

J E WOLFE CHAIRMAN NATIONAL RAILWAY LABOR CONFERENCE

ROM 474 UNION STATION 9U WEST ADAMS ST CHGO

MEDIATION OF CASES A-7746 BLF&E AN BALTIMORE & OHIO  
RAILROAD AND A-7746-SUB 1 BGF&E AND B&O (BUFALO DIVN)  
SCHEDULED FOR APRIL 19TH IS HEREBY CANCELLED. JOINT  
WOLFE SCHULEE ORAM AND GILBERT COY DELLA CORTE

THOMAS A TRACY EXECUTIVE SECY NATIONAL MEDIATION  
BOARD

---

**Exhibit U**

Filed May 2, 1966

**WESTERN UNION  
TELEGRAM**

1966 APR 15 PM 6 55

LLA671 (43) (37) AA407

C A WA465 PD

FAX WASHINGTON DC 15 NFT

J E WOLFE CHAIRMAN NATL RAILWAY LABOR CONFERENCE  
RM 474 UNION STATION 517 WEST ADAMS ST CHGO

MEDIATION OF CASES A-7747, BLF&E AND NORFOLK & WESTERN  
RAILWAY AND A-7747-SUBS2, BLF&E AND N&W (VIRGINIAN DIST),  
SCHEDULED FOR APRIL 19TH IS HEREBY CANCELLED. JOINT  
WOLFE, DAY, MACGILL AND GILBERT, COPY GLOVER

THOMAS A TRACY EXECUTIVE SECRETARY NATIONAL MEDIA-  
TION BOARD.

**Exhibit V**

Filed May 2, 1966

NATIONAL MEDIATION BOARD  
WASHINGTON, D. C. 20572

March 31, 1966  
File No. C-3654

Mr. J. E. Wolfe, Chairman  
National Railway Labor Conference  
Room 474, Union Station  
517 West Adams Street  
Chicago, Illinois 60606

Mr. H. E. Gilbert, President  
Brotherhood of Locomotive Firemen & Enginemen  
15401 Detroit Avenue  
Cleveland, Ohio 44107

Gentlemen:

Reference is made to the various applications of the Brotherhood of Locomotive Firemen & Enginemen for the mediation services of this Board in a dispute with several carriers on the subject:

"Section 6 notice of November 15, 1965, for an agreement providing for the recall and restoration of seniority rights of those firemen (helpers) whose employment and seniority were terminated by the application or misapplication of the Award of Arbitration Board No. 282; and providing for reimbursement for such monetary losses sustained as result of improper termination, inconvenience, or deprivation of seniority rights."

In several instances the parties have been advised that a hearing will be held in order to afford the parties full opportunity to present their views and contentions as to whether the Board should docket the applications on this subject. This is to advise that the hearing will cover all of the applications as identified below.

For purposes of identification, file No. C-3654 has been assigned to the BLF&E notice involved. The various applications received from BLF&E have been assigned "sub" numbers as indicated in the following list.

**Exhibit W**

Filed May 2, 1966

**BROTHERHOOD OF LOCOMOTIVE  
FIREMEN AND ENGINEMEN  
CLEVELAND, OHIO**

April 8, 1966

Mr. Thomas A. Tracy  
Executive Secretary  
National Mediation Board  
Washington, D. C. 20572

Dear Mr. Tracy:

This is in response to your letter of March 31, 1966, addressed jointly to Mr. J. E. Wolfe and me further in connection with the various applications of the Brotherhood of Locomotive Firemen and Enginemen for invocation of the services of the National Mediation Board in disputes with various carriers on the following:

"Section 6 notice of November 15, 1965, for an agreement providing for the recall and restoration of seniority rights of those firemen (helpers) whose employment and seniority were terminated by the application or misapplication of the Award of Arbitration Board No. 282; and providing for reimbursement for such monetary losses sustained as result of improper termination, inconvenience, or deprivation of seniority rights."

In your letter you advise that file No. C-3654 has been assigned jointly to all of the applications on this subject with "sub" numbers from 1 to 21 identifying each of the applications. You further advise that a hearing will be held in the near future to afford the parties to these disputes full opportunity to present their views and contentions as to whether the Board should docket the applications on this subject.

We reject the categorizing of these disputes in "C" number designations and to challenge the validity thereof.

It is the contention of this organization that the disputes herein involved are the direct result of the proper service of Section 6 notices and as such should be treated with dispatch.

I would refer you to the following portions of Section 5, First, of the Railway Labor Act, as amended:

"Section 5, First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused."

\* \* \* \* \*

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts *by mediation*, to bring them to agreement . . ."  
(Underscoring added)

Surely it is not intended that the above quoted language contemplates that a hearing be held to determine whether the Board should act. The command of the Railway Labor Act is explicit that when the services of the National Mediation Board are invoked under Section 5 the Board shall promptly, *by mediation*, use its best efforts to bring the parties to agreement. A hearing, with all its complexities and attendant delays, is the very antithesis of prompt action by mediation. In no other industry in the country are investigations held to determine whether mediation should commence when requested.

We do not feel the National Mediation Board is empowered to challenge the invocation of its services for these

disputes and we insist that these cases be designated with "A" numbers and that mediators be assigned immediately.

Very truly yours,

/s/ H. E. GILBERT

cc: J. E. WOLFE, *Chairman*  
National Railway Labor Conference  
J. W. ORAM, *Chairman*  
Eastern Carriers' Conference Committee  
E. H. HALLMAN, *Chairman*  
Western Carriers' Conference Committee  
W. S. MACGILL, *Chairman*  
Southeastern Carriers' Conference Committee

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**Exhibit X**

Filed May 2, 1966

NATIONAL RAILWAY LABOR CONFERENCE  
ROOM 474, UNION STATION  
517 WEST ADAMS STREET  
CHICAGO, ILLINOIS 60606

April 12, 1966

Mr. Thomas A. Tracy  
Executive Secretary  
National Mediation Board  
Washington, D. C.

Dear Mr. Tracy:

This refers to your letter dated March 31, 1966, re your file C-3654, Mr. Gilbert's response thereto dated April 8th, and my telegram to you on the same subject dated April 11th.

The burden of Mr. Gilbert's letter is to the effect that when the mediatory services of the National Mediation Board have been invoked with respect to a proposal served purportedly pursuant to Section 6 of the Railway Labor Act, the Board is without power to consider the legality, propriety or bargainability of that proposal.



I am unable to perceive any basis in reason or law for Mr. Gilbert's insistence that mediation proceed on the BLF&E proposal prior to a determination of the questions that I presume underlie your letter of March 31st.

There are reasons that I regard as compelling which militate against premature mediation of not only the proposal in question but of the entire BLF&E notice of which it is an integral part. As you are aware, on or about November 15, 1965, that Organization served on the carriers a purported Section 6 notice consisting of three parts, of which the proposal in question was Part 2. Part 1 of the notice proposed changes in the practices governing the use of firemen, and Part 3 thereof proposed a type of training program for locomotive engineers. As I am sure is obvious, the three proposals contained in the notice are closely interrelated.

There are a number of infirmities in the November 15, 1965 BLF&E notice and its component parts to which I will allude only briefly here. The notice was served on the carriers long prior to the March 30, 1966 expiration date of Arbitration Award No. 282 and, therefore, even if otherwise valid (which it is not), could not have become effective as a Section 6 notice prior to March 31st. Thus the mandatory procedures of the Railway Labor Act have yet to be initiated in any valid or constructive sense with respect to the notice, and mediation at this time patently would be untimely. The question of the prematurity of the November 15th notice is pending and undecided before the United States District Court for the District of Columbia. In the case of *Certain carriers v. BRT et al*, Civil No. 142-66, raising the identical issue in the same court, final judgment was rendered on April 6th, wherein it was held that the union notices there in question did not become effective until after the expiration date of the Arbitration Award.

The November 15, 1965 BLF&E notice also advances proposals that are in conflict with Public Law 88-108 and the Award of Arbitration Board No. 282 pursuant thereto, and

which also would contemplate collective bargaining by the BLF&E on behalf of persons whom it does not represent. In addition, the notice is unlawful in that the organization would presume to arrogate to itself the determination of craft or class for representation purposes which by law is committed to the National Mediation Board.

I have not attempted to catalog the numerous respects in which the organization's notice of November 15, 1965 is unlawful and concerns matters which are not subjects of mandatory collective bargaining under the Railway Labor Act. Issues raised by the carriers' position in these respects are expected to be determined in the case now pending in the United States District Court for the District of Columbia to which the BLF&E is a party. Every effort will be made by the carriers to achieve an early disposition of these questions. I would expect all concerned to abide by the decision of a court of competent jurisdiction and, pending that decision, it appears to me that it would be disrespectful to the court for the National Mediation Board to hold any proceedings relating to the BLF&E notice.

If, however, the National Mediation Board sets hearings on the BLF&E notice of November 15, 1965, the carriers will be represented and it will be our purpose at such hearings to set forth more fully our position regarding the issues in litigation.

Yours very truly,

J. E. WOLFE

cc: MR. H. E. GILBERT  
President  
Brotherhood of Locomotive  
Firemen and Enginemen  
15401 Detroit Avenue  
Cleveland, Ohio 44107

**Exhibit Y**

Filed May 2, 1966

NATIONAL RAILWAY LABOR CONFERENCE  
ROOM 474, UNION STATION  
517 WEST ADAMS STREET  
CHICAGO, ILLINOIS 60606

April 13, 1966

Mr. Thomas A. Tracy  
Executive Secretary  
National Mediation Board  
Washington, D. C.

Dear Mr. Tracy:

Supplementing my letter to you of April 12 re your file C-3654, I wish to advise you that the suit pending in the United States District Court for the District of Columbia involving the carriers and the BLF&E, to which I referred in my earlier letter, is set for hearing on April 27, 1966. It has been stipulated between the counsel for the respective parties that among the issues to be heard on that date will be the question of the prematurity of the BLF&E Notice of November 15, 1965.

In view of the fact that the organization has agreed that the prematurity question will be presented to the court on April 27 it is inappropriate in the extreme that the organization at the same time seeks mediation proceedings on the very Notice that is in question before the court. In addition, the fact that the legal status of that Notice is to be the subject of hearings before the court on April 27, with the likelihood of a decision promptly thereafter, reinforces my opinion that it would be inappropriate and constitute an act of disrespect to the court for any extra-judicial proceedings to be conducted by the National Mediation Board.

Very truly yours,

J. E. WOLFE

cc: MR. H. E. GILBERT  
President  
Brotherhood of Locomotive  
Firemen and Enginemen  
15401 Detroit Avenue  
Cleveland, Ohio 44107

**Exhibit Z**

Filed May 2, 1966

BROTHERHOOD OF LOCOMOTIVE  
FIREMEN AND ENGINEMEN  
CLEVELAND, OHIO

April 15, 1966

Mr. Thomas A. Tracy  
Executive Secretary  
National Mediation Board  
Washington, D. C. 20572

Dear Mr. Tracy:

This refers to Mr. J. E. Wolf's letter dated April 12, 1966, to you regarding your file C-3654.

I shall not attempt to treat with all the distortions in Mr. Wolfe's letter. However, there is one which at this time should be called to your attention. His letter of April 12 states in part:

"Part 1 of the notice proposed changes in the practices governing the use of firemen, and parts thereof proposed a type of training program for *locomotive engineers.*" (underscoring added)

My letter of February 22, 1966,, which was in response to yours of February 17, clearly states forth the class or craft of employees notice number 3 dated November 15, 1965 covers.

Yours very truly,

/s/ H. E. GILBERT

cc: J. E. WOLFE, *Chairman*  
National Railway Conference

**Exhibit BB**

Mr. ....  
(General Chairman)  
.....  
.....  
.....

Dear Sir:

This has reference to our previous correspondence concerning your combination proposal of ..... purportedly served pursuant to Section Six of the Railway Labor Act relating to the employment of firemen-helpers, and other issues, identified by you as Notices 1, 2 and 3.

I informed you in my letter of ..... that:

“Without waiving the carrier’s position as to the prematurity, unlawfulness and nonbargainability of your requests, the carrier reserves the right to file such proposals as it may consider appropriate for concurrent handling with your requests if or when it should be subsequently determined either prior or subsequent to March 31, 1966 that any part of requests may properly be progressed.”

As you know, no determination has as yet been made that your requests or any part thereof may properly be progressed.

While it has been and is our position that the service and progression of any notice concerning the subject matter of the Award of the Arbitration Board is premature and void if filed prior to March 31, 1966, we are prepared to begin preliminary discussions on your proposal of November ....., 1965, without waiving any of our objections thereto. However, if such discussions are to begin as you insist, they must, to be meaningful, cover both your proposed requests and those which we propose on the same subject matter to be handled concurrently.

Therefore, we hereby give notice that we propose at the appropriate time to revise and supplement the agreement rules, practices and procedures now in effect, in accordance with the proposal set forth in "Attachment A," appended hereto, such proposal to be considered and progressed concurrently with your proposal of ..... It is suggested that the initial discussions on the carrier's proposal be held at (place), (date), at (time), at which time we will also discuss the organization's proposals.

Please acknowledge receipt of this notice and advise if the proposed time, date and place for holding the preliminary discussions are agreeable to you.

Service of the aforesaid notice is not to be considered as a waiver of any objection raised to your November ..... proposal as fully described in our letter of November .....

In that respect it definitely remains our position that your combination proposal of November ..... is premature, unlawful and nonbargainable and we hereby reserve the right to seasonably assert that position when appropriate.

In the event that we are unable to reach an agreement upon the organization's and carrier's proposals at the discussions, we further propose that the matter be handled on a joint national basis. In accordance with established procedure which has been followed in the railroad industry on numerous occasions during the last fifty years, if an agreement is not reached in our discussions, this carrier will join with other carriers serving a like notice upon their employees represented by the Brotherhood of Locomotive Firemen and Enginemen in the creation of regional Carriers' Conference Committee which, in conjunction with the National Railway Labor Conference, will be authorized to represent it in progressing the matter to a conclusion. It is requested that you join with representatives of the employees on other carriers who are receiving like proposals

in the creation of an Employees' National Conference Committee to handle to a conclusion the subject matter of these proposals.

Yours very truly,

*Attachment "A"*

A. Eliminate Part B, Section II, of the terms prescribed by the Award of Arbitration Board No. 282.

B. Establish a rule to provide that—

1. Management shall have the unrestricted right, under all circumstances, to determine when and if a fireman (helper) shall be used on other than steam power in all classes of freight service (including all mixed, miscellaneous and unclassified services) and in all classes of yard service (including all transfer, belt line and miscellaneous services to which mileage rates do not apply).

2. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of paragraph 1 of this rule shall be eliminated.

C. The adoption of paragraphs A and B above shall not affect the application of the terms of Parts C and D of Section II of the Award by Arbitration Board No. 282 except in so far as may be necessary to reflect the elimination of Part B of Section II and the adoption of the rule set forth in Paragraph B. 1. above.

**Exhibit CC**

GENERAL GRIEVANCE COMMITTEE  
OF THE  
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS  
BALTIMORE AND OHIO RAILROAD SYSTEM

February 10, 1966

Mr. C. J. Schuler  
Manager Labor Relations  
Baltimore & Ohio Railroad Co.  
Baltimore 1, Md.

Dear Sir:

This relates to your letter of February 7, 1966, which you state "has reference to our previous correspondence concerning your combination proposal of November 15, 1965, purportedly served pursuant to Section Six of the Railway Labor Act relating to the employment of firemen-helpers, and other issues, identified by you as Notices 1, 2 and 3." Your letter was accompanied by an "Attachment A" which you suggested be discussed on February 15, 1966, at 10:30 A.M.

At the outset certain points must be made perfectly clear. For one thing, as I told you in conference, the three notices served on your railroad by the BLF&E on November 15, 1965, cannot properly be characterized as a "combination proposal" or as a single proposal. The BLF&E has served upon you three separate and independent proposals which, in our judgment, conform to the requirements of Section 6 of the Railway Labor Act, and which we requested be given separate handling. All our notices were served under Section 6 of the Railway Labor Act and it is our intention to pursue the procedures of that Act with respect to them individually.

Your letter of February 7, 1966, does not state whether or not "Attachment A" is intended by you to be a notice served pursuant to Section 6 of the Railway Labor Act to



begin collective bargaining. Because of the ambiguity of your letter and attachment it is not possible for us to determine whether it is or is not a Section 6 proposal.

Until you clear this up, we cannot determine what our response to your letter of February 7, 1966, should be, or what our legal obligations are in the premises. We are entitled to have your specific statement as to whether or not your "Attachment A" is intended to be a notice served pursuant to Section 6 of the Railway Labor Act for the purpose of beginning collective bargaining.

Manifestly, we are unable to express any opinion at this time on your request that we form an employees' national conference committee. In view of the above, suggest that the initial discussions on the carrier's proposals be postponed until a later date.

Yours very truly,

/s/ J. M. LUTTMAN  
J. M. LUTTMAN  
General Chairman

cc: H. E. GILBERT, I.P.

---

**Exhibit DD**

February 14, 1966

Dear Sir:—

This has reference to your letter of February 10, 1966 replying to my letter of February 7, 1966 in which I referred to your proposal of November 15, 1965, and gave you the Carrier's proposal to revise and supplement the agreement rules, practices and procedures now in effect, as set forth in Carrier's "Attachment A".

My letter of February 7, 1966 clearly constituted a notice under Section 6 of the Railway Labor Act of its desire and intent to at the appropriate time supplement the agreement rules, practices and procedures now in effect in accordance with the contents of "Attachment A" thereto, and such

letter specified that the Carrier's proposal "\*\*\*\*should be considered and progressed concurrently with your proposal of November 15, 1965.\*\*\*."

Under Section 6 of the Act you should meet with me within the thirty day period specified; I now suggest we meet in Baltimore at 10:30 AM on February 21, 1966 to discuss the Carrier's Section 6 notice. If this date is not convenient, please suggest another date which is within thirty days of February 7.

Very truly yours,

C. J. SCHULER

bc

Mr. J. F. GRIFFIN, Administrative Secretary  
National Railway Labor Conference  
Room 474, Union Station  
517 W. Adams St., Chicago, Ill. 60606

General Chairman's letter referred to above is substantially the same as that attached to your Circular No. 6-32-J.

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**Exhibit EE**

GENERAL GRIEVANCE COMMITTEE  
OF THE  
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS  
BALTIMORE AND OHIO RAILROAD SYSTEM

February 21, 1966

Mr. C. J. Schuler  
Manager Labor Relations  
Baltimore & Ohio Railroad Co.  
Baltimore 1, Md.

Dear Sir:

This will acknowledge receipt of your letter of February 14, 1966.

Since your letter states that the carrier's letter of February 7, 1966 was a notice served under Section 6 of the Rail-

way Labor Act, I am prepared to pursue the procedures required by the Act. Subject to the reservations and objections contained in the next following paragraph, I suggest that we meet in your office on March 7, 1966 at 10 A.M. for our initial conference at which time we will discuss the carrier's proposal contained in Attachment "A".

Your notice is unlawful in at least two respects—

1. That it fails to specify on what date the changes proposed are intended to become effective, and
2. That it obviously incorrectly assumes that the Award of Arbitration Board 282 continues as a part of the rules and procedures on the carrier's property after March 30, 1966.

Accordingly, all of our discussions with you must be conducted with a full reservation of all our rights in the premises and without waiving any of them.

Your letter of February 14, 1966 suggests that "\*\*\*\* we discuss the carrier's notice and the organization's proposals at the conference\*\*\*\*". Our three (3) separate proposals have already been a subject of conferences on the property and these conferences have been terminated, and services of the National Mediation Board have been invoked with respect thereto. I cannot permit these conferences to be re-opened and hence our meeting must be limited to discussion of the carrier's notice alone.

Very truly yours,

/s/ J. M. LUTTMAN  
J. M. LUTTMAN  
General Chairman

cc. H. E. GILBERT,  
Int. Pres.

**Exhibit FF**

Mr. J. W. Hammers, Jr.  
Manager Labor Relations  
Terminal Railroad Association of St. Louis  
St. Louis, Missouri

Dear Mr. Hammers:

This will acknowledge receipt of your letter of February 11, 1966.

Since your letter states that the carrier's letter of January 31, 1966 was a notice served under Section 6 of the Railway Labor Act, I am prepared to pursue the procedures required by the Act. Subject to the reservations and objections contained in the next following paragraph, I suggest that we meet in your office on \_\_\_\_\_, 1966 at \_\_\_\_\_ A.M. for our initial conference at which time we will discuss the carrier's proposal contained in Attachment "A".

Your notice is unlawful in at least two respects—

- (1) That it fails to specify on what date the changes proposed are intended to become effective, and
- (2) That it obviously incorrectly assumes that the Award of Arbitration Board 282 continues as a part of the rules and procedures on the carrier's property after March 30, 1966.

Accordingly, all of our discussions with you must be conducted with a full reservation of all our rights in the premises and without waiving any of them.

Your letter of February 11, 1966 suggests that " \* \* \* we discuss the carrier's notice and the organization's proposals at the conference \* \* \*". Our three (3) separate proposals have already been a subject of conferences on the property and these conferences have been terminated. I cannot permit these conferences to be reopened and hence our meeting must be limited to discussion of the carrier's notice alone.

Very truly yours,  
General Chairman  
BLF&E

## Transcript of Proceedings, March 28, 1966

## PROCEEDINGS

2 THE COURT: Now I believe you had an application you desired to make, Mr. Shea?

THE DEPUTY CLERK: Civil Action 777-66, Bangor and Aroostook Railroad Company et al vs. Brotherhood of Locomotive Firemen and Enginemen.

MR. RAUH: If Your Honor please, I have a preliminary matter in connection with 777. My name is Joseph Rauh. I represent the Firemen and I have a number of preliminary matters on 777.

THE COURT: What is your preliminary application?

MR. RAUH: My first preliminary request is that this matter be put over until 1:45 this afternoon, for two reasons:

First, I was myself called from a meeting to which I had been summoned by the Attorney General; and second, co-counsel is on an airplane flying in from Chicago.

THE COURT: I have a case on trial, Mr. Rauh, and I explained to Mr. Groner that I am going to take this matter up this morning.

MR. RAUH: Secondly——

THE COURT: If I had a free day I would have no hesitancy doing that, but once I start a case on trial I  
3 don't want to break into it.

Now I will hear you.

MR. RAUH: Well, I have some other preliminary matters, if Your Honor please.

THE COURT: I don't know what is before me.

MR. RAUH: Well, there is a case 777——

THE COURT: What is your application, Mr. Shea?

MR. SHEA: Well, if I may state——

THE COURT: Before I hear preliminary objections I have to know what is before me.

MR. SHEA: If the Court please, certain papers, I think, have been handed up to Your Honor.

THE COURT: Yes.

MR. SHEA: This is a motion for a temporary restraining order.

THE COURT: I see. Very well. Against what?

MR. SHEA: It is against the Brotherhood of Locomotive Firemen and Enginemen.

As Your Honor will recall, the award in reference to the Brotherhood of Locomotive Firemen and Enginemen was by agreement extended to March 30, but it expires on March 30. A suit was commenced in Chicago by the

4 Brotherhood of Locomotive Firemen and Enginemen against certain of the railroads and it was asserted it was a class action. That case has been transferred here; it came in a few days ago. We commenced—

THE COURT: Before you proceed, all I wanted to know was what was before me.

I will hear Mr. Rauh's objections.

I want to say this, Mr. Rauh: ordinarily applications for temporary restraining order are ex parte and ordinarily we don't grant continuances. If this were a motion for a preliminary injunction I would hear the parties at length and of course I would fix a time that would be convenient to everyone concerned.

MR. RAUH: Our next preliminary matter, if Your Honor please, is a request on behalf of the Brotherhood of Locomotive Firemen and Enginemen that you send this case to another Judge.

It is the feeling of my client that your action on May 3rd in deciding questions affecting the Firemen, when they were not a party to the case and indeed, as the plaintiff here suggests, that you already decided these questions, he suggested in his motion for restraining order this morning, we would ask in the public interest that you send this case to another Judge.

5 There are going to be thousands of firemen whose jobs depend—

THE COURT: I am not going to send it to another Judge because this whole litigation was specially assigned to me two years ago and I am going to entertain the application.

MR. RAUH: May I just for the record complete my statement, if Your Honor please?

THE COURT: I am going to deny that application. I will hear you, Mr. Shea.

MR. RAUH: Well, we have an additional point, if Your Honor please.

THE COURT: What is your additional point?

MR. RAUH: But I want to make clear, are you denying me the right to put on the record the reasons why I am asking you to send this elsewhere, Your Honor?

THE COURT: Mr. Shea, I will hear you.

You are not entitled to be heard at all on an ex parte application for restraining order.

I will hear you, Mr. Shea.

\* \* \* \* \*

**Transcript of Proceedings, March 31, 1966**

\* \* \* \* \*

2 MR. SHEA: Your Honor, this is a motion for the interpretation and supplement of your temporary restraining order in the Bangor and Aroostook Railroad case.

3 THE COURT: I see.

MR. SHEA: As Your Honor will recall, you issued a temporary restraining order restraining the Brotherhood of Locomotive Firemen and Enginemen from authorizing, calling, encouraging, permitting, or engaging in any strike or work stoppages and from picketing the premises of any of the plaintiffs over any dispute as to the agreements, rules, regulations, interpretations, or practices to be applied by plaintiffs, or any of them, upon the expiration of the period during which the Award by Arbitration Board No. 282 shall continue in force as an Award.

Now, if the Court please, starting at 12:01 and thereafter, 12:01 this morning, a number of railroads have been struck, the Boston and Maine; Central of Georgia; the Grand Trunk; the Illinois Central; the Missouri Pacific; New Orleans Union Passenger Terminal; the Pennsylvania; Port-

land Terminal; Seaboard Air Line; Spokane International Railroad Company; Union Pacific Railroad Company; Texas and Pacific Railway Company.

\* \* \* \* \*

6       MR. SHEA: And it would seem to me, if the Court please, that the language of your temporary restraining order, which I read to you, clearly covers the situation of this strike, and what we are asking, if the Court please, in our motion is that you make it clear that the temporary restraining order which you had issued extends to these specific strikes.

\* \* \* \* \*

8                   AFTERNOON SESSION

THE COURT: Mr. Rauh, the Court will hear you.

MR. RAUH: Thank you, Your Honor.

May it please the Court, first we would like to move that Your Honor send this matter to another Judge.

THE COURT: I will deny that.

MR. RAUH: May I put on the record the reasons?

THE COURT: You are not addressing a notebook, you are addressing the Court.

MR. RAUH: But I want to put it on the record for purposes of the appeal, Your Honor.

THE COURT: This is denied.

You may proceed.

MR. RAUH: And I want to understand that I may not put on the record for purposes of appeal—

THE COURT: The Court will not hear any further on that.

MR. RAUH: Thank you, Your Honor.

\* \* \* \* \*

Transcript of Proceedings, April 2, 1966

\* \* \* \* \*

2                   PROCEEDINGS

MR. SHEA: If the Court please, this is a motion for a rule to show cause and to cite for contempt for failure to obey a temporary restraining order of this Court.



We ask that a show cause order be returnable at 1:45 this afternoon or as soon thereafter as meets the convenience of the Court.

The contempt proceedings which we are instituting is aimed at penalties in a civil contempt proceeding for failure to obey your order as supplemented.

Let me make it clear, if the Court please, that we are seeking that the Union and Mr. Gilbert be held in contempt only for failure to call off the strike after your supplemental order which made it absolutely clear that the order was applicable to the strikes in question. We are not seeking to have them held in contempt for any action prior to your supplemental order which made it clear that it was applicable——

THE COURT: This proceeding you seek to institute in behalf of the eight railroads who are affected by the supplemental order?

MR. SHEA: That is right, Your Honor.

THE COURT: I take it from the caption that you  
3 are asking that a civil contempt proceeding be instituted.

MR. SHEA: That is correct, Your Honor.

(Pause.)

THE COURT: Have you got the proposed order?

MR. RAUH: Will Your Honor hear me?

THE COURT: Yes, indeed.

MR. RAUH: Of course, I haven't seen the order yet. I would like to see the order before I argue.

THE COURT: I think you have a right to see it.

Of course, this is only a rule to show cause.

MR. RAUH: I understand that, but it also creates problems for us.

(Mr. Shea handed a document to Mr. Rauh and Mr. Groner.)

MR. RAUH: Thank you.

(Pause.)

MR. RAUH: If Your Honor please, the Defendant Brotherhood most respectfully requests that you send this matter of

contempt to another Judge, that the Union deeply feels that you cannot be fair to them and they have asked me to most respectfully ask you to send the contempt matter out to another Judge.

THE COURT: I certainly will not do that. This  
4 is civil contempt.

MR. RAUH: May I please state on the record the reasons why the Union feels this?

THE COURT: No, I am not interested in what the Union feels just now. As a matter of fact, it is almost an impertinence. I don't mean that you personally are impertinent, but I think it is an impertinence on the part of the Union.

Now I will issue the rule to show cause and make it returnable at two o'clock this afternoon.

\* \* \* \* \*

10

## PROCEEDINGS

THE COURT: Mr. Shea, you may proceed.

MR. SHEA: If the Court please, I wish to make just a brief opening statement.

On March 28 you issued a temporary restraining order. This was served on the defendants here and I think the evidence will show was widely circulated to members of the Brotherhood.

A motion was made in the Court of Appeals to stay this order and that motion denied and the appeal dismissed.

You issued on March 31st a supplement to the restraining order of March 28 and that was appealed. The appeal was dismissed and the motion to stay was denied.

I want to make it clear at the outset that this proceedings is aimed at contempt for actions following the supplemental order.

We are not in this proceedings attempting to show contempt during the period between the initial restraining order and the supplementary order.

So far as I know, if the Court please, no return has been made, and if I understand the rules correctly, we are entitled on that account, without any further proof, to the

order of contempt. However, I do propose to put on witnesses.

11 I think it will be shown from the proof that, as I said, these orders were served on the Brotherhood and served on the individual defendant, that they were brought widely to the notice of members of the Brotherhood, and that that order has been wilfully disobeyed.

This, if the Court please, I think will be made clear from the witnesses, as I think it also appears from the failure to make return to the order to show cause.

We are asking in this civil contempt proceedings for penalties which I think the Court is clearly authorized to impose by the Mineworkers case and other cases we have cited.

We are asking for a penalty of \$500,000 a day against the Union and \$10,000 a day against Mr. Gilbert. We will ask that you specify the hour at which that penalty will be imposed if the men are not back at work.

That is my brief opening statement, if the Court please, and I will first ask opposing counsel if he will stipulate that Mr. Gilbert was served with the order of—the temporary restraining order of March 31.

MR. RAUH: I have some opening remarks too, Your Honor.

THE COURT: Yes, indeed.

12 MR. RAUH: First, I most respectfully and humbly ask Your Honor to send this case to another Judge.

THE COURT: Now I shall not hear any more of that request.

If this was a contempt that was a personal affront to the Judge, I would of course send it to another Judge. This is merely a proceeding to enforce a restraining order and it is purely impersonal. Under those circumstances, it is my proper function to take proceedings to enforce the order.

A civil proceeding is merely a means of compelling obedience to the process of the Court.

Now what is next?

MR. RAUH: Well, for the purposes of the Appellate Court I should like to put on the record the reasons why the Union seeks to have you send this to another Court.

THE COURT: No, I shall not hear you on that.

MR. RAUH: Secondly——

THE COURT: As a matter of fact, it is an improper request.

I suppose you do it at the behest of your clients and therefore I have no criticism of you, but it is an improper request.

\* \* \* \* \*

**Transcript of Proceedings, April 4, 1966**

\* \* \* \* \*

3 MR. SHEA: The 27th of April.

Now, at that time, if the Court please, we would come before you on a hearing for permanent injunction. In short, we will avoid the intermediate step.

4 The issues which will be presented at that time, if the Court please, are:

One, whether or not the rules in effect at the expiration of the Award are the rules as modified by the Award and action taken under the Award, or whether the rules in effect are those which were in existence prior to the effective date of the Award.

The second question which will be presented is the validity of certain Section 6 notices which were filed during the effective period of the Award. That will include the subordinate issue of whether those notices were premature. It may or may not include—and this we have not determined upon at this time—the question of whether those notices, at least in part, in regard to the apprentice program, were bargainable with this particular Union.

Those will be the only questions presented, in short.

At that time there will not be presented any question as to whether or not the strike was or was not about the third aspect of the notice, the apprentice aspect.

Now this, if the Court please, is our proposal. There will not be involved any waiver, in going forward in this

manner, of any rights of the plaintiffs or petitioners, or my clients, let me put it, the Carriers, to compensatory contempt proceedings; but we will seek from Your Honor  
 5 a final judgment, which I think Your Honor will be persuaded the rules allow on the basis of a certificate, on the issue of a final injunction.

THE COURT: On the issue of permanent injunction?

MR. SHEA: Permanent injunction; excuse me.

Now, let me, if Your Honor will permit me, to speak just a moment to make sure that I have covered everything in our understanding.

THE COURT: Surely.

(Pause)

MR. SHEA: I believe, Your Honor, I have accurately represented the understandings between the parties.

THE COURT: Do you concur in that understanding, Mr. Raub?

MR. RAUB: Yes, Your Honor.

#### Transcript of Proceedings, April 6, 1966

#### Appearances:

##### For Carrier Plaintiffs:

FRANCIS M. SHEA, Esq., RICHARD T. CONWAY, Esq.,  
 RALPH J. MOORE, JR., Esq.

For BLF&E in Misc. No. 41-63 and Brotherhood of RR  
 Trainmen and Switchmens Union in Civil Action No. 142-66:

MILTON KRAMER, Esq.

#### 2

#### PROCEEDINGS

THE DEPUTY CLERK: Preliminary matters.

MR. SHEA: If the Court please, we have four matters to present this morning.

One is the order vacating the rule to show cause.

THE COURT: This only vacates the rule to show cause.

MR. SHEA: That is all.

THE COURT: Because rights may have accrued, and probably have accrued, under the restraining order and under the contempt order.

MR. SHEA: Quite right. And as Your Honor will recall, those we specifically reserved.

THE COURT: Yes, because one day's fine accrued under the contempt order.

MR. SHEA: One or two. I think you will want to take a close look at the terms of the order.

THE COURT: Of course, the Court can't handle those matters sua sponte. It must be initiated by counsel, I presume either counsel for the plaintiffs or, in view of the fact that the fines accrued to the Government, by the Secretary of Labor, in whose jurisdiction this matter lies.

MR. SHEA: This matter, I imagine, will be straightened out in the next reasonable period of time.

3 THE COURT: Very well.

MR. SHEA: But this does not relate at all to that.

THE COURT: Yes, there is nothing before the Court—as a matter of fact, the Court does not take those matters up sua sponte.

MR. SHEA: I understand.

THE COURT: The Court only takes those matters up when presented by counsel for the party that has rights in the matter.

• • • • •

**Transcript of Proceedings, April 22, 1966**

• • • • •

3 MR. RAUH: In the same matter, if Your Honor please, there is pending a motion to disqualify. We could argue that on the 27th—

THE COURT: No, those matters aren't subject to argument.

I am going to overrule the affidavit as insufficient because an affidavit of bias and prejudice must show personal bias and personal prejudice against the party. That affidavit doesn't show it at all. I am overruling the affidavit.

MR. RAUH: Thank you, Your Honor.  
(The matter stood concluded.)

\* \* \* \* \*

**Transcript of Proceedings, May 4, 1966**

3 THE COURT: Before taking this matter up the Court wishes to call attention to a few features of two motions that were filed by the plaintiffs in connection with the contempt proceeding.

I am afraid there is a little misunderstanding. It was my intention, when I imposed the fine, that a fine should go into effect if the strike was not terminated by noon on Sunday, April 3rd, and was to be assessed for every twenty-four hours during which the strike continued beyond that time.

It was not my intention that one day's fine should be assessed that noon and another's day fine thereafter.

So that on the basis of the facts shown in the motion, only one day's fine has accrued and not two days' fine.

That was clearly my intention. I examined the transcript of my remarks and I find I said the following:

4 "I am going to impose a fine on the Union of \$25,000 a day and on Mr. Gilbert of \$2,500 a day for each day that the strike continues, beginning tomorrow noon, that is, April 3rd."

Now it is true that the order that was prepared for my signature and that I signed is subject to the construction that two days' fine has accrued. If Mr. Rauh had called my attention to the wording of the order I would have modified it, but he overlooked doing it.

In any event, I shall adhere to my intention.

\* \* \* \* \*

Transcript of Proceedings, May 12, 1966

Washington, D. C.  
Thursday,  
May 12, 1966.

The above causes came on before

THE HONORABLE ALEXANDER HOLTZOFF, United States District Judge, at 2:15 p.m.

2      Appearances:

For the Carriers:

FRANCIS M. SHEA, Esq., RALPH T. CONWAY, Esq.

For the Brotherhood:

JOSEPH L. RAUH, JR., Esq., ISAAC N. GRONER, Esq.

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PROCEEDINGS

THE DEPUTY CLERK: Bangor and Aroostook etc. and others vs. Brotherhood etc.

MR. SHEA: Would you hand that to the Court.

I have handed up to Your Honor our proposed judgment in the Bangor and Aroostook case involving the B.L.F.&E. We are agreed on this order except for three points.

The first and most important are represented by paragraphs 4 and 5 of the proposed judgment.

In paragraph 4 we provide expressly that the railroad cannot terminate the employment of firemen pursuant to the provisions of C(2), (3), (4) and (6), and that they can't offer comparable jobs to firemen helpers pursuant to the provisions of C(6).

3      Then in 5 we provide that the rules governing the use of firemen prior to the enactment of Public Law 88-108 are not restored; that the rules in effect at the expiration



of the Award are the rules, as modified by the Award, and may not be changed except by agreement or until the procedures of the Railway Labor Act are exhausted; and that unless otherwise agreed, the carriers have no obligation to use firemen on engines in freight and yard service except as required by the Award, including the protective provisions of the Award; and that the individual firemen continue to enjoy the protections which are provided by the Award, but the railroads are not required to make any replacements in the event a fireman retires or is discharged for cause or is otherwise removed by natural attrition, unless the replacement is needed to fill a position which was not subject to being abolished by the Award.

Now as to most of these provisions there is no disagreement, but what opposing counsel would like to introduce here is the statement, to begin with, that the situation which existed as of the close of the effective period of the Award is frozen. Now, this is appropriate language for an opinion——

4 THE COURT: Yes, it is not an appropriate——

MR. SHEA: We had this same issue up, as Your Honor will recall, in the——

THE COURT: I used that word in my opinion.

MR. SHEA: And it is clear in the opinion, but it could be misleading here.

THE COURT: Yes.

MR. SHEA: Then they wish to introduce certain provisions which I think are quite ambiguous and, it seems to me, with all due deference, are ambiguous in some measure, at least, because they seem to me not to square with an understanding of what the Award provided and the interpretations under the Award.

What it is proposed to introduce is a sentence saying the railroads cannot terminate any firemen—which of course we have in—who were employed as of March 30, 1966. That we provided for. The railroads cannot, they suggest, the railroads cannot, except as directly related to reductions of traffic occurring after March 30, 1966, reduce the number

and substantial nature of the opportunities for the employment of firemen helpers which they had in effect on that date.

Now, a provision of this kind introduces all kinds of difficulty of interpretation, to begin with. On March 30th  
 5 a C-2 fireman might have been on the extra list, there might have been a dozen men in regular positions on that date, so the opportunity on that date would have been an opportunity for twelve C-2 men. The day before, none of the regular assignments might have been open.

THE COURT: I think perhaps I ought to hear the other side.

MR. SHEA: The point which we make, the arrangement which we provided is whatever rights they had under the rules as modified by the Award they continue to have. But it seemed rather clear that Your Honor didn't intend to freeze persons in particular positions.

THE COURT: I had the opportunity of reading over this proposed order because you submitted a copy of it in advance. I will hear the other side as to any changes that they want to suggest.

MR. RAUH: May it please the Court.

Would you hand up, please, our proposed order.

Before going to our proposed order, if Your Honor please, because Your Honor decided an issue that was not among the stipulated issues I request permission to reargue one of the points in Your Honor's opinion.

6 THE COURT: And what is the point?

MR. RAUH: The point is your holding that not only was Notice No. 1 premature, but that it was invalid.

This was not an issue submitted to Your Honor in the stipulation.

THE COURT: Well, it was argued before me on both sides.

MR. RAUH: No, Your Honor is mistaken, I most respectfully point out. The railroad has never contended, from the beginning of this litigation, that No. 1 was not bargainable: it has held it was premature. Your Honor has held it is both premature and non-bargainable, and it is for that reason that I request permission.

I know Your Honor has ruled and I may not reargue. Therefore, I am not starting by reargument, I am starting by requesting permission.

THE COURT: I understand.

It seems to me that my holding that the two notices relate to non-bargainable matters is a necessary corollary or sequel to my ruling on the basic issues that were submitted to me. I think I will let that stand, Mr. Rauh.

MR. RAUH: Yes, Your Honor.

Now as to the difference between the order submitted by the railroads and the order submitted by the brotherhood. They are three. Let me take the two to which Mr. Shea did not have an opportunity to address himself, first, so that all three issues will be before Your Honor.

THE COURT: I feel that I should hear your objections first and then, if it is necessary to reply, why, I will give Mr. Shea an opportunity to reply.

MR. RAUH: On page 5 of our order, paragraph 9, we thought that we should follow the form that Your Honor used and we refer to Notice No. 1 and Notice No. 2 are invalid; whereas the railroads' proposed order says certain aspects of the notices.

The difference, if Your Honor please, is related to the difference in contention between the railroads and the brotherhood, in which the railroads contend that the notices were put together and we contend that they were separate. And we followed Your Honor's language that Notice No. 1 and Notice No. 2—

THE COURT: I dealt with them separately.

MR. RAUH: Yes, Your Honor, and that is why we feel that our No. 9 is preferable to their No. 9. That is the only difference, if Your Honor please, in that respect.

THE COURT: I am comparing the two versions of paragraph 9 and I don't see any real difference except that Mr. Shea's draft starts by saying, "Those aspects of the proposals (referred to in Section I-K of the Stipulation) served by the BLF&E upon certain of the rail-

roads which were identified as Notice No. 1 and Notice No. 2." Whereas, you say, "Notice No. 1 and Notice No. 2 served by the BLF&E upon certain of the railroads," and so on, "are invalid." I don't see that there is any difference in meaning there.

If you have some thought about that I would like to hear it.

MR. RAUH: Both the railroads and the union think there is a difference in meaning.

THE COURT: Now what is the difference?

MR. RAUH: The difference is that the railroads feel that these words indicate that the three notices are part of a package, so they refer to those aspects of them. We feel that they are separate, so we refer to Notice 1 and Notice No. 2.

THE COURT: Instead of, "Those aspects of the proposals"?

MR. RAUH: Yes, Your Honor.

THE COURT: Do you have any objection to that change, so that it would read Notice No. 1 and Notice No. 2?

9 In other words, as I understand Mr. Rauh's suggestion it is to strike out the first line of paragraph 9 and the first two words to and including the parenthesis and substitute the words Notice No. 1 and Notice No. 2.

Is that your suggestion?

MR. RAUH: In essence, Your Honor.

MR. SHEA: If the Court please, I will suggest how it is readily to be done, if it is to be done.

Let me just say why we have it in here in this form. As you recall, I argued that these were three aspects of the same notice, it was all integrated, they served them on the same day. But it was not only that they served them at the same time, but they were really integrated. Your Honor didn't find it necessary to reach that issue.

THE COURT: I don't see that it makes any difference.

MR. SHEA: You didn't find it necessary to reach that issue.

I may want, so far as an appeal is concerned, to use the

argument in defense of this judgment. That is the only purpose.

We have not, however, sought in this language to write anything that either favors us or them. What we have  
 10 done is to take the language that we used in the stipulation, which both parties thought at the time was neutral language, and we have therefore used what both sides thought neutral language and have included that so that there will be no inference which would militate against the argument, one argument, which I would propose to make in defense of the judgment.

THE COURT: Mr. Rauh, I don't construe those first three lines of Mr. Shea's draft as meaning that the two notices are to be considered as one. I certainly didn't consider them as one in my opinion, and I don't think these three lines mean that they are to be considered as one.

MR. SHEA: It was not intended—what we tried to do was to use the language of the stipulation, which would leave that issue open.

THE COURT: I think this is all right, and I want to repeat—and, naturally, everything I am saying is of record—that I did in my opinion treat the new notices as two separate proposals and not as parts of one proposal.

I don't know whether that makes any difference, but if it makes a difference to either side, I am perfectly willing to say that I treated them as two separate proposals.

11 MR. RAUH: Thank you, Your Honor.

The next difference, the second difference, is that our order in paragraph 11 on page 7 provides an injunction against the railroads for those things that the railroad has been determined unable to do.

The railroads' proposed order has a one-way injunction, it is an injunction against the brotherhood. But Your Honor made certain rulings against the railroads' contention and it is our opinion that those rulings against the railroads should be embodied in an injunction, just as much as—

THE COURT: Which paragraph of Mr. Shea's draft are you referring to?

MR. RAUH: I am referring in our order to paragraph 11—

THE COURT: What is the corresponding—

MR. RAUH: They don't have one, Your Honor.

You see, the railroads' order does not provide for an injunction against them on the items which you determined they may not do. We feel, especially in the light of the stipulation which I would like to read to Your Honor, that the injunction should run against the railroads to the extent that Your Honor ruled in our favor. I call to your attention in the stipulation the statement:

12        "The judgment or order to be entered by the Court after the trial on May 4, 1966 may include provisions for injunctive relief against the railroads or the BLF&E enforcing the determinations made by the Court."

That is exactly what we feel Your Honor should do. I am not at this moment asking Your Honor to approve our language on the injunction against the railroads because that will depend upon exactly what you are going to put in elsewhere as to the things they may not do.

THE COURT: I don't see any basis for an injunction against the railroads because there has been no proof that they have threatened to violate the Award. I am enjoining the brotherhood because they didn't threaten to strike, they actually struck. Whereas, there is no threat or any anticipation that the railroads are going to violate the Award.

Of course, if they do violate the Award, I shall give you very prompt relief, Mr. Rauh. That is why there is a provision for application at the foot of the decree.

MR. RAUH: May I respond, Your Honor.

THE COURT: Well, I will hear what you have to say.

MR. RAUH: The stipulation was intended, and I am sure Mr. Shea will not gainsay this, the stipulation was  
13        intended to make it unnecessary for either party to prove irreparable damage or threats. That is exactly what was intended with the language that the judgment or order may include provisions for injunctive relief against the railroads or the BLF&E.

We would, had the stipulation not been entered, have proved threatened violations. Indeed, Mr. Gilbert is here today for the very purpose that I may make an offer of proof through him that there existed, both before and after the Award, both before March 30th and after, many instances where the railroads have not even had firemen on jobs that were vetoed.

Mr. Gilbert is here for the purpose of testifying, if Your Honor will hear him, if Your Honor does not feel that the stipulation covers this, he is here to testify that at this very moment, since the Award, the railroads have run vetoed jobs without firemen.

THE COURT: The trial is closed and all that is before me this afternoon is the form of the decree, and I see no reason for including an injunction against the railroads.

Now what is your next objection?

MR. RAUH: The next point goes to the matter which Mr. Shea argued before Your Honor.

14 THE COURT: Yes, I would like to hear from you.

MR. RAUH: Back to paragraphs 4 and 5 of the railroad's order and 4 and 5 of the order which I handed up to Your Honor.

THE COURT: I have both before me.

MR. RAUH: The major difference I believe is clear. If Your Honor will look at page 3 of our order——

THE COURT: I have it.

MR. RAUH: —item No. 4, a sentence reading as follows, about two-thirds of the way down in paragraph 4:

“The railroads cannot, except as directly related to reductions in traffic occurring after March 30, 1966, reduce the number and substantial nature of the opportunities for the employment of firemen (helpers) which they had in effect on that date.”

The reason for that, if Your Honor please, is that the absence of that phrase will permit the railroads to do what Your Honor has said in his opinion they cannot do.



Let us take Oregon. Your Honor was so clear that they couldn't do things in the Full Crew states when there is a repealed Full Crew Law, that they couldn't take new action there, that Your Honor asked me not to waste my time  
15 in arguing that point.

THE COURT: That is right. I so held. There is no question about that.

MR. RAUH: Now, if you don't put in the sentence I have referred to, this is what will happen in Oregon on January 1, 1967, when the Full Crew Law is repealed: they will, in effect, reverse your determination this way, Your Honor—

THE COURT: If what you want is a direction that they may not act under the Award after the termination of any Full Crew Law, that is a little different; but your proposal here is vague and ambiguous.

MR. RAUH: I respectfully suggest that I would like to state the factual situation that will make it clear and not—

THE COURT: I like to make my orders very concrete so that, to use the old proverb, he who runs may read. I don't like abstractions.

Mr. Shea, is there any provision included in your draft about the Full Crew Laws?

MR. SHEA: Of course there is, Your Honor.

THE COURT: Where is it?

MR. SHEA: If you will look at 4, we have specifically  
16 cally provided that we may not terminate, pursuant to C(2), (3), (4), (6), anyone, and that we may not offer any comparable jobs. Those were the only two issues.

THE COURT: Well, doesn't that cover it, Mr. Rauh?

MR. RAUH: No, Your Honor, and I have been trying to state the facts to demonstrate that it doesn't cover it.

THE COURT: Now why doesn't it?

MR. RAUH: Because all they have to do in Oregon is not give these men any work.

Here will be the situation in Oregon on January 1st, 1967: they will simply give the C-2 men no work and they will be worse off. Your order will make them worse off than they would otherwise be.



THE COURT: No, they will have to give the C-2 men work because they will have to run firemen on those trains. The only way they can deprive them of work is to cancel trains.

MR. RAUH: No, Your Honor, these C-2 men, most of them, are presently not working on vetoed jobs.

THE COURT: What are they doing?

MR. RAUH: They are there because the Full Crew Law protected their jobs.

THE COURT: That is right.

MR. RAUH: They are not working on vetoed jobs; 17 they are working on jobs that could, except for the Full Crew Law, have been abolished.

THE COURT: That is right. But under Paragraph 4 they can't abolish them after the Full Crew Law expires, and if the job can't be abolished, why, they have to give these men work.

MR. RAUH: It was exactly to make that clear that we put the sentence in.

THE COURT: I think this makes it perfectly clear.

MR. RAUH: No, Your Honor. All that Mr. Shea's language says is they cannot terminate. It doesn't say they cannot take their work away. So what we would like you to add is they cannot terminate or take their work away. We are perfectly willing to use Mr. Shea's language with your interpretation of it.

THE COURT: What do you say about that, Mr. Shea?

MR. SHEA: Well, if the Court please, the only issue with respect to Oregon, as Your Honor will recall, was whether or not we could make offers of new jobs to the C-6 men or, two, whether we could terminate C-2 men.

We have expressly provided, as you will find in 4, that we may not terminate the employment of C-2 men——

THE COURT: Mr. Rauh says that is all right but 18 there is no compulsion upon you to give them work.

MR. SHEA: Now if you will look to our provision in paragraph 5, down about seven lines before the end:

“Such individual firemen shall continue to enjoy the protections of their rights to work which are provided in the Award.”

Now, if the Court please. I assume what Your Honor is doing, and all Your Honor is doing, is determining what rules are in effect at the expiration of the Award under 88-108, and those rules are in effect whether it be in a Full Crew state or any other state. And what those rules provide is a C-7 man has to be continued in engine service; a C-6 man, because we can no longer offer a comparable job to him, he too, unless he has accepted a comparable job earlier, must be continued in engine service.

Now, C-2 and C-3 men, as Your Honor will recall, under the Award and under the interpretations of the Award, their rights under the Award and under the rules which are continued in effect under the Award, the C-2 and C-3 men—it is express in the Award for the C-3 men, as you will recall, and is express in the interpretations as to C-2 men—their rights are to fill positions in the vetoed jobs or in  
 19 hostling service or in the passenger service if they are not filled by C-6 and C-7 men. And this we have expressly provided. They will continue to have those rights.

Now, Your Honor obviously isn't interpreting what our obligations may be under state law, Your Honor is interpreting—

THE COURT: I am going to definitely say, and that is of record, that paragraphs 4 and 5 are to be interpreted as not permitting railroads to abolish jobs under the Award after any Full Crew Law is repealed. That was my intention in my opinion.

MR. SHEA: I understand, Your Honor. The jobs that are abolished are jobs which by the terms of the Award itself are abolished.

THE COURT: Yes, exactly. In other words, after January 1st, 1967, when in Oregon the Full Crew Law will not permit the railroads to abolish any jobs which were in existence during the Full Crew Law, while the Full Crew Law was in effect.

In other words, here is Train A which under the Award, if it had not been for a Full Crew Law, would have run without a fireman, but while the Full Crew Law is in effect  
 20 it has been run with a fireman. My intention was that

after January 1st, 1967, when the Full Crew Law is no longer in effect, that train still has to run with a fireman, even though under the Award if the Full Crew Law had not prevented this, they could have dispensed with a fireman during the two-year period.

MR. SHEA: Let me try to clarify this so I understand it, Your Honor.

We expressly provide that no C-2 man or no C-6 man may be eliminated, and we expressly provide that whatever the Award provides in the way of job protection for those men they continue to have. In short, the rules that you are dealing with, if I understand correctly, are the rules which were modified by the Award.

Now, what the Award said is, one, you have got to continue firemen in hostling service, you have to continue them on passenger trains, and you have to continue them on vetoed jobs. And the jobs were vetoed in Oregon as well as they were anywhere else. Now you have to use them in those jobs. You are not frozen in any particular job.

In addition to that, if the Court please, the C-7 men have to be given jobs even though there are not enough  
21 jobs in the vetoed positions, in the hostling positions, et cetera, in the jobs that have to be filled by firemen, even though there are not enough jobs to take care of the C-7 and C-6 men, nevertheless we have to make available positions in engine service for them. But when they die or retire we don't have to fill those places. This is clear, and clear in Your Honor's opinion.

So far as the C-2 men are concerned, they are entitled to fill any position which isn't filled by a C-6 or C-7 man, any position that requires the use of firemen under the Award. And we have expressly made provision for that.

No I take it Your Honor is not determining what obligations there may be under state law.

THE COURT: No.

MR. SHEA: Your Honor is interpreting what the rules are in effect—

THE COURT: My interpretation is this: that I have to take as my major premise what the Supreme Court held. It was a debatable question whether the Award superseded the Full Crew Laws. The Supreme Court held that it did not.

MR. SHEA: Quite right.

THE COURT: So that if a Full Crew Law require a fireman on every engine in a particular state, no matter what  
22 the Award said, those firemen had to be kept.

My intention was that in view of the fact that no step can be taken under the Award, affirmative step, after the termination of its effective period, even after the Full Crew Law is repealed you cannot under this Award abolish a fireman's job even though you could have abolished it if it hadn't been for the Full Crew Law. That is my intention.

MR. SHEA: Yes, but Your Honor does have in mind, of course, that it is the Award that abolishes the jobs, and the Award abolishes the jobs—if a job has to be kept open—

THE COURT: The Award abolished the job. The Full Crew Law said it must not be abolished but must be kept going. And the Supreme Court held that the Full Crew Law prevails. Therefore, that job cannot be abolished. It can't be abolished after the Award is terminated.

Now, however, if the fireman on that run resigns, you don't have to fill that vacancy. Suppose, for example—

MR. SHEA: Well, that is the point I am making, Your Honor.

THE COURT: Well, that is my interpretation and I don't see that any new language is necessary. If there is any question about it, you can refer to a record of what I am saying.

23 In other words, suppose on January 2nd, 1967 Train No. 1 that had been run with a fireman, although if it hadn't been for the Full Crew Law that fireman could have been dispensed with on the effective date of the Award, but the Full Crew Law prevents that, so that on January 2nd, 1957 that job continues. Suppose, however, on January 1st, 1968 that fireman retires; then he needs no successor. I think that is clear enough.

I realize that, in part, the Award is frustrated, but that comes from the Supreme Court, not from me.

MR. SHEA: Well, the Award is frustrated by state law.

THE COURT: Exactly.

MR. SHEA: But when state law is eliminated, then the Award can operate.

THE COURT: You see, I have held, contrary to your contention, that you can't act under the Award to make up for what the state law prevented you from doing while the Award was in effect.

Now is there anything else?

MR. RAUH: No, Your Honor. With that clarification I think you have fully clarified it.

THE COURT: Well, I will sign the decree.

THE COURT: Well, I will sign the decree.

24 MR. SHEA: There is a second case, you probably want a duplicate copy.

THE COURT: Thank you, gentlemen.

May I make a suggestion as to procedure. I presume, of course, there will be appeals and possibly cross-appeals in each case. I venture the suggestion, although perhaps it is outside of my jurisdiction, that the appeals in the two actions might well be argued together in the Court of Appeals because the basic questions are the same.

MR. SHEA: If the Court please, I have said to Mr. Rauh and to the others that I would cooperate in their getting them up at the same time.

MR. RAUH: If Your Honor please, it is exactly to that end that we are going to make a request. Your Honor denied it in the other case, but that would make this possible. And that is that we get the record up forthwith. I know that creates a problem in Your Honor's mind, but I would suggest that there are unusual circumstances that warrant that here, namely the fact that the other case is about a month ahead and for us to catch them it will be necessary to make up that time.

THE COURT: What do you say about that?

MR. SHEA: If the Court please, I oppose any forthwith

25 order, but I should note for Your Honor that it only took Mr. Kramer a few days to get the Clerk to get it up.

THE COURT: That is what I think. I don't think the word "forthwith" is necessary. Frankly, the reason I don't like the word forthwith, I don't like to be too peremptory with the Clerk.

MR. RAUH: The Clerk has told us it would help.

THE COURT: You go ahead and see the Clerk and he will fix it up for you very promptly. You will have no difficulty. I will sign any order requiring the transmission of the original. I just balk at the word "forthwith" because, as I say, it sounds too arbitrary a direction to the Clerk.

MR. RAUH: We will talk to the Clerk and be back with any order that might expedite it, Your Honor.

THE COURT: You will have no difficulty getting expedition from the Clerk. The only time there are delays in the Clerk's office in getting a record on appeal is when counsel doesn't act and cooperate, and sometimes they don't. But I am sure both of you will.

(The hearing stood concluded.)

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Filed May 9, 1966

Civil Action  
No. 777-66  
Civil Action  
No. 784-66

**Opinion**

Francis M. Shea and Richard T. Conway, both of Washington, D. C., for the plaintiffs in Action No. 777-66; and for the defendants in Action No. 784-66.

Joseph L. Rauh, Jr. and Isaac N. Groner, both of Washington, D. C., for the defendant in Action No. 777-66; and for the plaintiff in Action No. 784-66.

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This is the trial of two consolidated actions, one brought by a group of railroads against the Brotherhood of Locomotive Firemen and Enginemen, and the other instituted by the Brotherhood against a number of railroads. The second action had been filed originally in the United States District Court for the Northern District of Illinois, and on defendants' motion was transferred here by Chief Judge Campbell of the Illinois Federal Court. The two were then consolidated on motion of the plaintiffs in Action No. 777-66. In each action a declaratory judgment and a permanent injunction are sought and a counterclaim is interposed for reciprocal relief.

The basic issues to be determined are the effect and the consequences of the termination of the effective period of an Award of a compulsory arbitration proceeding concerning two principal issues of a nationwide controversy between Class I railroads and organizations of railway employees. The differences in dispute were the need for continued use of firemen on Diesel engines in freight and yard service, and the possibility of reduction in the size of train crews on numerous runs throughout the country. The compulsory arbitration was directed by a Joint Resolution of Congress, approved August 28, 1963, 77 Stat. 132, in order to prevent a threatened nationwide railroad strike.

It was claimed by the carriers that firemen were not needed on Diesel engines in freight and yard service, as there were no longer any fires to stoke and that whatever other help was rendered by the fireman was in fact accorded by the head brakeman, whose post was also in the cab of the engine.<sup>1</sup>

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<sup>1</sup> No question was raised as to the necessity of firemen in passenger service because the railroads did not dispute the need of having two men in the cab, and in passenger service it was not customary for a brakeman to be stationed in the cab.

The Arbitration Board, known as Board 282, reached the conclusion that firemen were no longer needed on Diesel engines in freight and yard service, except as to ten per cent of the number, who it was held should be retained for unusual and extraordinary situations. In order to prevent hardship and distress to thousands of employees, however, the Award of the Board did not direct that ninety per cent of the firemen in question could be discharged forthwith, but provided that the result should be accomplished only by attrition over the years, which would ease any possible financial distress to the individuals concerned and to their families. Accordingly, it was prescribed by the Award that all firemen who had at least ten years of service, should retain their status until death, retirement, resignation, or discharge for cause. The same right was extended to firemen having between two and ten years of service, with the qualification, however, that the carriers were to have the privilege of offering comparable positions to firemen in this class, for which they were qualified or could be made qualified, with a guarantee of employment in the new positions for at least five years. Any moving expenses incurred by the employees under these circumstances were to be borne by the employer. If such an offer were declined by the employee, he could be discharged upon the payment of severance pay, the size of which was dependent upon the length of his service. The employment of firemen of less than two years' service could be terminated upon the payment of severance allowances, again measured by the length of service.

In respect to the proposed reduction of sizes of crews on numerous trains, the Award formulated certain specific considerations called "guidelines," to govern the decision as to whether the size of any specific crew should be reduced. The issues as to particular crews were remanded to the local properties for negotiations. If negotiations did not result in an agreement, special boards of adjustment were to be



created in the respective localities in order to resolve the disputes.<sup>2</sup>

The consolidated actions now before the Court were tried on the basis of stipulation of facts, which the Court adopts as its findings of fact. This opinion will constitute the conclusions of law. The issues in these action involve the provisions of the Award which relate to firemen. Similar questions affecting trainmen were determined in *Akron & Barberton Belt Railroad Co. et al. v. Brotherhood of Railroad Trainmen, et al.*, 250 F. Supp. 691.

The Joint Resolution of August 28, 1963 provided that the Award of the Arbitration Board was not to become effective until sixty days after it was filed. The statute further directed that the Award was to continue in force for such period as the Board should determine, but not to exceed two years from its effective date. The Board ordered in the Award that it should continue for two years from its effective date, unless the parties agreed otherwise. The expiration date of the Award was originally January 25, 1966. It was extended by agreement to March 31, 1966 as to the Brotherhood of Locomotive Firemen and Enginemen.

While the Award was in effect the railroads gradually reduced the number of firemen in their employ by about 18,000, and paid separation allowances approximating about \$36,000,000 to firemen whose employment was severed. About 1200 employees accepted offers of other positions under the provisions of the Award.

As heretofore indicated the questions to be determined at this time are the rights and liabilities of the parties in respect to firemen as to rates of pay, rules, and working conditions after the expiration of the effective period of the Award. It is claimed by the union, as was also contended by the Brotherhood of Railroad Trainmen in the *Akron & Barberton* case *supra*, that upon the termination of the ef-

<sup>2</sup> The history of the controversy and the details of the arbitration and the Award were summarized in *Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Burlington & Quincy Ry. Co.*, 225 F. Supp. 11; and in *Akron & Barberton Belt Railroad Co. et al. v. Brotherhood of Railroad Trainmen, et al.*, 250 F. Supp. 691.

fective period of the Award, the *status quo* that existed prior to the Award was automatically restored. The Court rejected this contention in the *Akron & Barberton* case, and here repeats that rejection.<sup>3</sup> The Award and the operations under it created a new status in regard to rules and working conditions. This status may not be changed, as was explained in detail in the opinion of this Court in the *Akron* case, except by agreement or by serving notices under Section 6 of the Railway Labor Act (45 U.S.C. § 151) and exhausting, step by step, each of the remedies accorded by that statute.<sup>4</sup> Neither side may make changes unilaterally until the remedies under the Railway Labor Act are exhausted. No recourse may be had to self-help until that stage is reached, which means that so far as the firemen are concerned, they may not resort to a strike, and any such strike would be illegal.

Every statute must receive a reasonable and sensible construction. Any interpretation that obviously fails to effectuate the purpose and intent of the legislative body should be rejected. This doctrine applies not only to the Joint Resolution of Congress, but also to the Award of the arbitration board. The Award manifestly contemplated the eventual permanent abolition of the jobs of firemen on Diesel engines in freight and yard service, except as to ten per cent of that number, but proposed that the desired result should be reached gradually by a process of attrition. It was not intended, therefore, that the steps taken during the effective period of the Award should become a nullity at the end of the two-year period. The purpose of the Congress and the effect of the Award would be entirely frustrated if the railroads were required to rehire firemen whose positions have been abolished during that interval.

<sup>3</sup> The reasons for this conclusion are summarized in detail in the *Akron* case, 250 F. Supp. 691, and need not be repeated here.

<sup>4</sup> The machinery provided by the Railway Labor Act for the settlement of labor disputes is also described in detail in the opinion in the *Akron* case, *supra*.

So, too, the vested rights of those firemen who were accorded permanent protection by the Award, are not to be wiped out.

It is argued by counsel for the Brotherhood that since the Award is at an end, whenever any fireman dies, retires, or resigns thereafter his position should be filled by a new appointment. Such a course too would completely defeat the purpose and the meaning of the Award, for the objective of the Award was to abrogate the use of unnecessary firemen, but to accomplish this result by degrees and as far as possible in a painless manner.

On the other hand, neither side may take any further affirmative steps under the Award after its termination date. Thus, the railroads may not discharge any more firemen pursuant to the provisions of the Award. What has been accomplished under the Award remains and is not to be nullified or wiped out. The firemen with seniority of more than ten years retain a permanent status for their working life, which was granted to them by the Award. The firemen who accepted comparable jobs with a guarantee of five years' employment, retain that guaranty. On the other hand, the carriers are under no obligation to fill vacancies that had been caused by the separation of firemen from their positions, or to fill future vacancies. Those positions are permanently abolished. As heretofore stated, a new status has been created and no change may be made in that status except by agreement or by the service of notices under Section 6 of the Railway Labor Act, and recourse to the provisions of that statute.

A number of States have what are known as "full crew" laws, that require railroads operating within their borders to maintain crews of a certain specified minimum number. The Supreme Court has recently held in *Brotherhood of Locomotive Engineers v. Chicago, R. I. & P. R. Co.*, 382 U.S. 423, that Award 282 did not supersede these "full crew" laws. The result is that in some States, the railroads have not been able to achieve reductions in the number of

firemen that they would have been permitted to make under the Award, if the "full crew" laws had not interfered. One of those States is Oregon, which has recently repealed its full crew law effective January 1, 1967. It is argued by counsel for the carriers that after January 1, 1967, the railroads should be permitted to take advantage of the provisions of the Award to the extent of offering comparable jobs to firemen who had between two and ten years' standing, and discharging firemen of less than two years' standing. This Court disagrees. Since the effective period of the Award has expired, no affirmative steps may be taken under it. The mere fact that State statutes, as construed by the Supreme Court, have prevented the railroads in some instances from taking full advantage of the provisions of the Award, does not have the effect of prolonging or restoring their rights when the bar of the State statute is eliminated. The situation must be deemed frozen as of the close of the effective period of the Award. This is entirely different from the converse ruling that no vacancies occurring by attrition after the termination date need be filled. In other words, there is no right or duty to take any affirmative step under the Award on the part of either side after the crucial date.

As has been indicated and as this Court held in the *Akron* case, a new status was created by the Award and the activities under it. This status prevailed as of the date of the termination of the effective period of the Award. The sole and exclusive method of modifying it is either by agreement or by serving appropriate notices under Section 6 of the Railway Labor Act and going through the various steps by way of negotiations, mediation, and the other proceedings provided by the statute. In this instance, three such notices were served by the union during the effective period of the Award. As this Court held in the *Akron* case, while notices might be served during that interval, they did not become effective until the day after the termination of the effective period of the Award. In other words, neither

side was under any obligation to participate in any of the proceedings accorded by the Railway Labor Act, pursuant to such notices until after March 31, 1966.

Naturally, there are certain limitations on the types of notices that may be served under Section 6 of the Act. They must relate to issues concerning which the party that initiates them has a right to insist on negotiating. In other words, to use the terminology of the Labor law, they must involve "bargainable issues", *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711, 739-740. Second, so far as Award 282 is concerned, the employees may not in the guise of serving notices under Section 6 of the Railway Labor Act, seek to abrogate or set aside the Award. It must be borne in mind that the Award is the result of a compulsory arbitration conducted under a mandate of Congress and has the stamp of judicial approval in the form of a judgment in a proceeding to impeach it. Neither a carrier, nor a union may institute proceedings, directly or indirectly, to set aside any provision of the Award, or the operations or activities that have taken place under it or the results that have been achieved. Collective bargaining must be restricted to the future and may not relate to alleged past grievances, *Elgin, J. & E. R. Co. v. Burley*, *supra*.

This discussion brings us to a consideration of the three notices served by the Brotherhood, which are involved in these actions. By stipulation the effect and validity of Notice No. 3 were withdrawn from disposition at this trial and were reserved for later consideration. The Court will, therefore, limit its decision in this respect to the first two notices. Notice No. 1, dated November 15, 1965, proposes that firemen taken from the seniority ranks of firemen shall be used on all locomotives on road and yard service, with a few enumerated exceptions. It provides further that a "job" may be operated without a fireman only when it becomes necessary to hire a fireman. Further it proposes that the carriers should hire and place on the firemen's seniority roster a sufficient number of firemen to comply with

the provisions of the notice. In other words, this notice demands the restoration of firemen on those runs for which Award 282 expressly held firemen were unnecessary. Obviously, compliance with this notice would be a consent to abrogate and do away with the outcome of the arbitration.

Notice No. 2, served at the same time, goes even further. It proposes that all employees whose employment and seniority were terminated under the Award of Arbitration Board 282 should be recalled and restored to their seniority roster and employed with their original seniority date and used as firemen. It further proposes that individuals so restored should be reimbursed for any monetary losses sustained by them as a result of the termination of their employment and for expenses that they may have incurred by way of travel, lodging and meals, etc., or as a result of sale of homes. This Notice uses the terms "application or misapplication" of the Award, and dominates the termination of employment under the Award as being "improper". Manifestly, the use of such phraseology is not to be commended. The Board that rendered the Award was created under the law of the land and its Award has eventuated in a judgment of the Court. Irrespective of the inappropriateness of the phraseology, the purpose of the Notice is not only to set aside the Award and to restore firemen whose employment has been lawfully terminated, but in addition to provide for the payment of damages or losses alleged to have been sustained by them. Manifestly, this is not permissible. The validity of the Award and of any steps taken under it during its effective period, are obviously not "bargainable issues".

It follows hence that Notices 1 and 2 are not valid under Section 6 of the Railway Labor Act and that, consequently, there is no obligation on the part of the carriers to enter into negotiations concerning the subject matter of these Notices. The union may not resort to unilateral action or have recourse to self-help in order to bring about the

results sought by the Notices. In other words, any strike for that purpose would be illegal as in violation of the Railway Labor Act and subject to injunction.

At the trial counsel for the union moved to dismiss the complaint as to three of the carriers and also as to the railroads constituting the Southern Railway System, on the ground that Award 282 was inapplicable to them. For reasons stated at the trial and also discussed in the opinion of this Court in the *Akron* case, *supra*, the motion was denied.

The union also reiterated its position that the Norris-LaGuardia Act was applicable to any attempt to enjoin any strike of railroad employees. For reasons fully stated by this Court in its opinion in the *Akron* case, which it would be surplusage to repeat, the Court holds that the Norris-LaGuardia Act is not applicable to an action or motion for such an injunction or a temporary restraining order.

In conclusion this Court may summarize its rulings as follows:

1. The termination of the two-year effective period of the Award of Arbitration Board 282 did not restore the rates of pay, rules, and working conditions existing prior to the enactment of the Joint Resolution of Congress of August 28, 1963. On the contrary, the provisions of the Award and actions taken under it during its effective period created a new set of rules and working conditions as of the date of its termination. Any attempt to change the new status may be pursued only by serving appropriate notices under Section 6 of the Railway Labor Act and invoking the course of action in the various stages prescribed by that statute.

2. Rights that have become vested as a result of the operation of the Award remain vested, and are not nullified. Thus, firemen having more than ten years' seniority retain the permanent status accorded to them by the Award until death, retirement or resignation. Firemen having a sen-



iority of two to ten years, who have accepted comparable jobs with a five year guarantee of employment retain that guaranty. Firemen whose employment has been severed and who have received severance allowances, retain the money that has been paid to them. The positions that have been abolished as a result of the operations of the Award are permanently abolished.

4. Whenever any firemen who has a vested seniority under the Award dies, retires, or resigns, the position that he had filled is automatically abolished and consequently no one need be designated to fill it.

5. As no further steps may be taken under the Award after the termination of its effective period, the carriers may not dispense with any more firemen pursuant to the terms of the Award, or offer comparable jobs to any of them. The fact that in some instances the carriers have been prevented by State "full crew" laws from severing the employment of some firemen in accordance with the Award, does not authorize the carriers to dispense with them or offer them comparable jobs after the repeal of any "full crew" law.

6. Notices that were served under Section 6 of the Railway Labor Act, during the effective period of the Award, although premature, are nevertheless to be regarded as having been legally served and need not be served again. They did not become effective, however, until the day after the termination of the effective period of the Award and there was no obligation on the part of either side to proceed to conferences, negotiations, or mediations required by the Act until after that date.

7. Notices 1 and 2 served by the Brotherhood of Locomotive Firemen and Enginemen purportedly under Section 6 of the Railway Labor Act are invalid in that they do not relate to matters subject to collective bargaining under the statute, but are attempts to abrogate the provisions of the Award of Arbitration Board 282, and in effect to restore the situation as it existed on August 28, 1963 with a re-



imbursement for losses alleged to have been sustained by firemen who have been discharged. These notices being illegal and ineffective, need not be complied with.

8. The Norris-LaGuardia Act does not apply to any action or motion for a preliminary or permanent injunction, or restraining order against a strike in violation of the provisions of the Railway Labor Act.

9. Any strike of railroad employees called before the exhaustion of all remedies provided by the Railway Labor Act would be illegal.

10. The prayer for a permanent injunction against a strike is hereby granted.

Counsel may submit an appropriate judgment in accordance with the foregoing rulings.<sup>5</sup>

/s/ ALEXANDER HOLTZOFF  
United States District Judge

May 9, 1966.

---

<sup>5</sup> Counsel for the Brotherhood of Locomotive Firemen and Enginemen, shortly prior to the trial of this action, filed a motion that the Judge disqualify himself, and this motion was accompanied by a so-called "affidavit of bias and prejudice." The Court denied the motion and overruled the affidavit. This action was based on two grounds: first, the affidavit was not timely filed in that it was submitted after a number of motions were heard and disposed of in this action; second, the affidavit contained no showing that the Judge had any personal bias or prejudice against the Brotherhood, but merely that the Judge had made certain rulings that were adverse to the Brotherhood. The fact that adverse rulings are made by a Judge is not a ground for an affidavit of bias and prejudice. It may be noted in passing that the affidavit ascribes to the Judge a statement that the Court would not *sua sponte* take steps to enforce the collection of the fine theretofore imposed, but this could be done only on the motion of the carriers or of the Government. This statement was in fact made by the Judge from the bench in open court in view of the fact that the fine was imposed for civil and not criminal contempt. It was made during a hearing on some of the many motions in this litigation. Obviously, this statement does not establish personal bias or prejudice, but quite the contrary. The authorities on these points were thoroughly reviewed by Judge Sirica of this Court in *United States v. Hanrahan*, 248 F. Supp. 471, and by Judge Wilson of the Eastern District of Tennessee, in *United States v. Hoffa*, 245 F. Supp. 772. This Court refers to and agrees with the discussion of the law on this subject in those two cases, and it would be surplusage to repeat it here.

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

• • • • •  
Filed May 12, 1966  
Civil Action No. 777-66  
Civil Action No. 784-66

**Judgment**

Civil Action No. 784-66 having been transferred to this Court by the United States District Court for the Northern District of Illinois; the said action having been consolidated by this Court with Civil Action No. 777-66; answers and counterclaims having been filed by the respective defendants in each of the said actions and answers to the counterclaims having been filed by the respective plaintiffs in the said actions; the respective parties on both sides having requested, among other thing, a declaratory judgment and injunctive relief; a trial of the issues raised by the respective claims for a declaratory judgment and injunctive relief having been set for May 4, 1966; the parties having entered into a Stipulation (dated April 30, 1966) as to the evidence to be offered and the issues to be submitted at said trial; the trial having been held on May 4, 1966 and oral argument having been heard at that time; and the Court upon due deliberation having issued its Opinion (dated May 9, 1966) and having directed therein that the Stipulation by the parties shall constitute its findings of fact and the said Opinion shall constitute its conclusions of law,

• • • • •

IT IS HEREBY ORDERED, DECLARED, ADJUDGED AND DECREED:

1. The Interstate Railroad is dismissed as a party to this consolidated proceeding, pursuant to the oral motion on May 4, 1966 by its counsel and by counsel for the Brotherhood of Locomotive Firemen and Enginemen. The remaining plaintiffs in Civil Action No. 777-66, including those named as defendants in Civil Action No. 784-66, hereinafter are referred to as the "railroads." The Brotherhood of

Locomotive Firemen and Enginemen, which is the defendant in Civil Action No. 777-66 and the plaintiff in Civil Action No. 784-66, hereinafter is referred to as the "BLF&E."

2. A railroad and its employees represented by the BLF&E were subject to Public Law 88-108 and the Award by Arbitration Board No. 282 thereunder if the railroad either served the BLF&E with the Section 6 notice of November 2, 1959 (referred to in paragraph 6 of the Complaint in Civil Action No. 777-66 and in paragraph 11 of the Complaint in Civil Action No. 784-66) or was served by the BLF&E with the Section 6 notice of September 7, 1960 (referred to in paragraph 8 of the Complaint in Civil Action No. 777-66 and in paragraph 12 of the Complaint in Civil Action No. 784-66), or both, and either notice remained outstanding throughout the period prior to the enactment of Public Law 88-108. All of the railroads and their employees represented by the BLF&E, consequently, were subject to Public Law 88-108 and the Award issued thereunder, including the railroads referred to in paragraphs 1 through 4 of Section I-C of the Stipulation (except to the extent that the application of the Award on the railroads referred to in paragraphs 1, 3, and 4 of Section I-C of the Stipulation was modified by the agreements entered into by such railroads and the BLF&E and attached as Exhibits A, B, D, E and F to the Stipulation, which agreements remain in full force and effect.).

3. The period during which Section II of the Award by Arbitration Board No. 282 "shall continue in force," as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108 and as extended by agreement, expired at 12:01 A.M. on March 31, 1966.

4. After the expiration of the Award, the railroads cannot terminate the employment of firemen (helpers) pursuant to the provisions of Paragraphs C(2), C(3), C(4) or C(6) of Section II of the Award and cannot offer comparable jobs to firemen (helpers) pursuant to the provisions of Paragraph C(6) of Section II of the Award.

5. The rules governing the use of firemen (helpers) in effect prior to the enactment of Public Law 88-108 were not restored upon the expiration of the Award. Subject to the provisions of paragraph 4 above, the modifications in those rules made by Section II of the Award and actions taken thereunder created a new status which is to be maintained after the expiration of the Award until changed by agreement or until the procedures of the Railway Labor Act (45 U.S.C. §§ 151-160) have been exhausted with respect to valid notices served under Section 6 of that Act (45 U.S.C. § 156) proposing changes in the status thus created. Unless otherwise agreed to by the parties, the railroads need not use firemen (helpers) on engines (other than steam powered) in freight and yard service except as required by the Award, including those provisions of the Award governing the rights of individual firemen (helpers) retained in engine service. Such individual firemen (helpers) shall continue to enjoy the protections of their rights to work which are provided in the Award, but the railroads need not hire a replacement for an individual fireman (helper) who retires, is discharged for cause or is otherwise removed from a railroad's active working list of firemen (helpers) by natural attrition, unless a replacement is needed to fill a position which was not subject to being abolished under the Award.

6. Those individuals who accepted offers of comparable jobs pursuant to Paragraph C(6) of Section II of the Award may continue in those jobs with the guarantees provided by the Award, but the railroads are not required to restore such individuals to fireman (helper) positions. Those individuals who were separated from employment by the railroads pursuant to the Award may retain the separation allowances paid to them in connection therewith, but the railroads are not required to restore such individuals to employment as firemen (helpers).

7. Notices of proposed changes in rules governing the use of firemen (helpers) as modified by the Award or actions

under the Award served under Section 6 of the Railway Labor Act during the effective period of the Award were premature and could not become effective under Section 6 of the Railway Labor Act until the day after the expiration of the Award. This ruling applies to the notices served by the BLF&E upon certain of the railroads referred to in Section I-K of the Stipulation and to the notices served by certain of the Railroads upon the BLF&E referred to in Section I-S of the Stipulation.

8. The parties serving or receiving the notices referred to in paragraph 7 above were under no obligation to confer, bargain or negotiate about the merits of the proposals made in those notices until after the notices became effective as provided in paragraph 7 above. The meetings described in Section I-L of the Stipulation, at which the railroads denied any obligation to negotiate about the merits of the proposals served by the BLF&E, did not constitute "conferences" within the meaning of Sections 5 and 6 of the Railway Labor Act (45 U.S.C. §§155, 156), and did not fulfill the requirement for conferences imposed by those Sections. Recourse to the National Mediation Board may be had only after the notices became effective and after conferences fulfilling the requirements of Sections 5 and 6 of that Act are commenced. The applications by the BLF&E for mediation, referred to in Sections I-N through I-Q of the Stipulation, therefore were premature and do not become effective until after conferences fulfilling the requirements of Sections 5 and 6 of the Railway Labor Act are commenced.

9. Those aspects of the proposals (referred to in Section I-K of the Stipulation) served by the BLF&E upon certain of the railroads which were identified as "Notice No. 1" and "Notice No. 2" are invalid, and the railroads have no obligation to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act at any time with respect to the said aspects of the proposals served by the BLF&E. This Judgment does not determine any issue as to whether the

railroads have an obligation after the expiration of the Award to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to that aspect of the proposals served by the BLF&E identified as "Notice No. 3," and is without prejudice to the rights of any party in that regard.

10. The Brotherhood of Locomotive Firemen and Enginemen, each of its lodges, divisions, locals, officers, agents and employees, and all persons acting in concert with them, are hereby permanently enjoined from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of any of the railroads over: (1) the failure or refusal of a railroad or railroads to restore or reinstate after the expiration of the Award by Arbitration Board No. 282 the rules in effect prior to that Award or to the enactment of Public Law 88-108; (2) the maintenance and application by a railroad or railroads pursuant to paragraph 5 above of the modifications made by the Award and actions taken thereunder in the rules in effect prior to the Award or to the enactment of Public Law 88-108, until such time as the status created by such modifications is changed by agreement or the procedures of the Railway Labor Act have been exhausted with respect to valid Section 6 notices proposing changes in that status; (3) the failure or refusal of a railroad or railroads pursuant to paragraph 5 above to use firemen (helpers) on engines (other than steam power) in freight and yard service except as required by the Award, or to hire replacements for individual firemen (helpers) who retire, are discharged for cause or otherwise are removed from a railroad's active working lists of firemen (helpers) by natural attrition; (4) the failure or refusal of a railroad or railroads to restore or reinstate as firemen (helpers) individuals who were separated from employment or given comparable jobs pursuant to the Award; (5) the failure or refusal of a railroad or railroads to confer, bargain,

negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to those aspects of the proposals served by the BLF&E identified as "Notice No. 1" and "Notice No. 2" declared to be invalid in paragraph 9 above, or the failure or refusal of a railroad or railroads to accept those aspects of the proposals; (6) the failure or refusal of a railroad or railroads prior to the expiration of the Award to confer, bargain, negotiate or participate in mediation with respect to that aspect of the proposals served by the BLF&E identified as "Notice No. 3," or the failure or refusal of a railroad or railroads to accept that aspect of the proposals until such time as conferences and mediation have been had as provided in paragraph 8 above and the procedures of the Railway Labor Act otherwise have been exhausted; or (7) any other actions by a railroad or railroads, or failures or refusals to act, which are authorized by this Judgment.

11. The court reserves jurisdiction of the proceedings claiming contempt referred to in Section II-C of the Stipulation, and this Judgment is without prejudice to the rights of any of the parties in such proceedings except insofar as issues which may be relevant thereto have been decided herein. The Court also reserves jurisdiction of the counterclaim for damages referred to in Section II-D of the Stipulation, and this Judgment is without prejudice to the rights of the parties with respect to the said counterclaim except insofar as issues which may be relevant thereto have been decided herein.

12. The Court reserves jurisdiction for the purpose of enabling any of the parties to this proceeding, or any person that may be or may hereafter become bound in whole or in part by this Judgment, to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this Judgment.



13. The Court having determined that there is no just reason for delay, it hereby directs pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that this Judgment be entered as a final judgment of the claims by the respective parties for a declaratory judgment and injunctive relief without costs.

Dated: May 12, 1966.

/s/ ALEXANDER HOLTZHOFF  
United States District Judge

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Filed May 18, 1966

Civil Action No. 777-66

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\* \* \* \* \*

**Notice of Appeal**

Notice is hereby given this 18th day of May, 1966, that defendant, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 12th day of May, 1966 in favor of Plaintiffs against said Defendant.

ISAAC N. GRONER  
*Attorney for*  
*Defendant*

Copy to: Francis M. Shea, Esq.  
734 Fifteenth Street, N.W.  
Washington, D. C.  
*Attorney for Plaintiffs*



Filed May 18, 1966

Civil Action No. 784-66

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

• • • • •

**Notice of Appeal**

Notice is hereby given this 18th day of May, 1966, that Plaintiff, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 12th day of May, 1966 in favor of Defendants against said Plaintiff.

ISAAC N. GRONER  
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Defendant*

Copy to: Francis M. Shea, Esq.  
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*Attorney for Plaintiffs*

---

Filed May 25, 1966

Civil Action No. 777-66

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

• • • • •

**Notice of Cross-Appeal**

Notice is hereby given that all the plaintiffs in the above-entitled action, with the exception of plaintiff Interstate Railroad, hereby cross-appeal to the United States Court

of Appeals for the District of Columbia Circuit from the final Judgment entered herein on May 12, 1966.

DAVID BOOTH BEERS  
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*Attorney for Plaintiffs*

Dated: May 25, 1966  
Of Counsel:  
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---

Filed May 25, 1966  
Civil Action No. 784-66

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\* \* \* \* \*

**Notice of Cross-Appeal**

Notice is hereby given that all the defendants in the above-entitled action hereby cross-appeal to the United States Court of Appeals for the District of Columbia Circuit from the final Judgment entered herein on May 12, 1966.

DAVID BOOTH BEERS  
Shea and Gardner  
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Dated: May 25, 1966  
Of Counsel:  
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37  
**BRIEF FOR BROTHERHOOD OF LOCOMOTIVE  
FIREMEN AND ENGINEMEN**

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, Appellant,**

v.

**BANGOR AND AROOSTOOK RAILROAD COMPANY,  
ET AL., Appellees.**

No. 20,192

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, Appellant,**

v.

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., Appellees.**

No. 20,193

**BANGOR AND AROOSTOOK RAILROAD COMPANY,  
ET AL., Appellants,**

v.

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, Appellee.**

No. 20,215

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., Appellants,**

v.

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, Appellee.**

No. 20,216

**United States Court of Appeals**

for the District of Columbia  
For The District of Columbia

**FILED JUL 21 1966**

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## STATEMENT OF QUESTIONS PRESENTED

Pursuant to Public Law 88-108, Act of August 28, 1963, 77 Stat. 132, U.S.C., Title 45, following § 157 ("the Public Law" hereinafter), Arbitration Board 282 made its Award, modifying certain conditions of employment applicable to firemen on the nation's railroads, subject to the limited two-year effective period prescribed in both the Public Law and the Award. The following questions in this case are directed to the legal situation after the Award, commencing as of 12:01 A.M. on March 31, 1966:

1. Whether, upon the expiration of the Award, the employment conditions in effect by virtue of collective bargaining prior to the Public Law and the Award are restored in full legal force and effect.

2. Whether the railroads were and are required to engage in collective bargaining in compliance with the Railway Labor Act, Act of May 20, 1926, 44 Stat. 577, as amended, U.S.C., Title 45 §§ 151 *et seq.* ("the Act" hereinafter) upon Notices served pursuant to Section 6 of the Act while the Award was in effect, proposing agreement by collective bargaining upon conditions, different from those provided in the Award, to be effective upon the expiration of the Award.

3. Whether the Norris-LaGuardia Act, Act of March 23, 1932, 47 Stat. 70, U.S.C., Title 29, §§ 101 *et seq.*, withdrew jurisdiction from the District Court to issue any injunction against a labor organization in relation to the foregoing matters of labor dispute.

4. With respect to the proceedings below, the question is presented whether the District Judge should have granted the Motion to Disqualify filed by the Brotherhood of Locomotive Firemen and Enginemen, Appellant in Nos. 20,192 and 20,193 and Appellee in Nos. 20,215 and 20,216 ("the BLF&E" hereinafter).

The answer to each of the foregoing questions, in the view of the BLF&E, is in the affirmative. The BLF&E is seeking only limited relief, however, as to Question 4, as set forth hereinafter at pp. 44-45.

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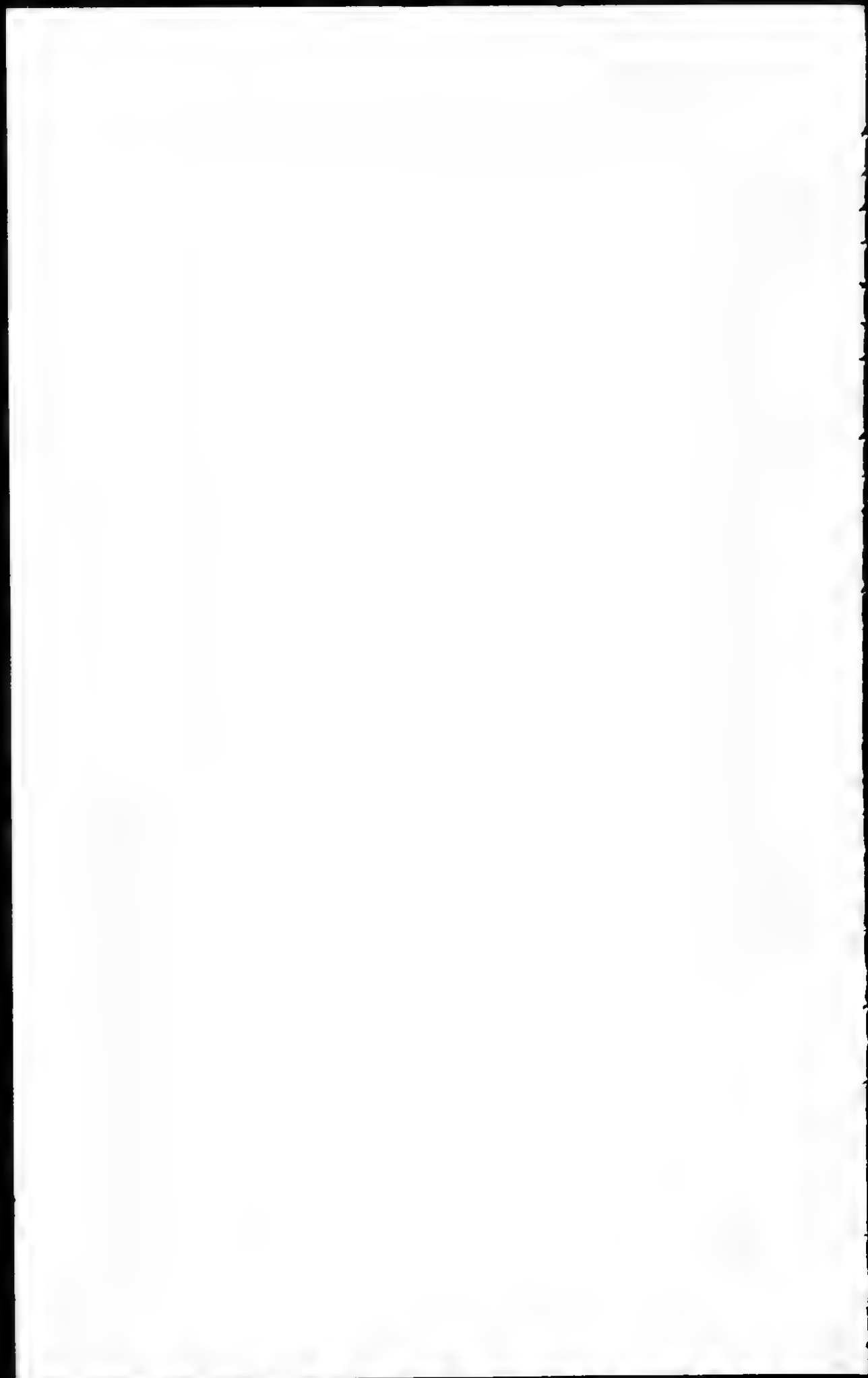
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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellant*,

v.

BANGOR AND AROOSTOOK RAILROAD COMPANY,  
ET AL., *Appellees*.

No. 20,192

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellant*,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Appellees*.

No. 20,193

BANGOR AND AROOSTOOK RAILROAD COMPANY,  
ET AL., *Appellants*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellee*.

No. 20,215

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Appellants*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellee*.

No. 20,216

Appeal From The United States District Court  
For The District of Columbia

**BRIEF FOR BROTHERHOOD OF LOCOMOTIVE  
FIREMEN AND ENGINEMEN**

### JURISDICTIONAL STATEMENT

The actions below involved matters in controversy exceeding \$10,000 in value, arising under the Public Law and the Act, laws of the United States, and Acts of Congress regulating commerce. (Joint Appendix ("JA" hereinafter) 2, 24-25, 58-59, 74-75.) The jurisdiction of the District Court thus was invoked and asserted under the Judicial Code, the Act of June 25, 1948, as amended, U.S.C., Title 28, §§ 1331 and 1337.

The Judgment below was expressly a final judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure (JA 236-237); and it both denied injunctive relief requested by the BLF&E (JA 211-212), and granted injunctive relief to the railroads who are Appellees in Nos. 20,162 and 20,163, and Cross-Appellants in Nos. 20,215 and 20,216 ("the railroads" hereinafter).<sup>\*</sup> (JA 235-236.)

This Court, accordingly, has jurisdiction, under §§ 1291 and 1292(a)(1) of the Judicial Code; and this is the appropriate Circuit Court under § 1294(a)(1).

### STATEMENT OF THE CASE

These cases involve the interpretation of an unprecedented emergency Act of Congress requiring the compulsory arbitration of a 1963 labor dispute in the railroad industry. The Act of Congress, the Public Law, expressly provided that the arbitral Award it authorized would be limited to two years except by agreement of the parties. The BLF&E contends that the Act meant what it said, that the Award expired by its terms and that the prior collective bargain-

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<sup>\*</sup> These four cases were consolidated by Order of this Court dated July 1, 1966. They were set down for hearing, by Order of this Court dated June 15, 1966, together with the four appeals arising from *Akron & Barberton Belt Railroad Company et al. v. Brotherhood of Railroad Trainmen, et al.*, Civil Action No. 142-66 in the District Court below ("Akron" hereinafter), Nos. 20,152 and 20,172, respectively, the appeal and cross-appeal involving the Brotherhood of Railroad Trainmen, and Nos. 20,158 and 20,191, those involving the Order of Railway Conductors and Brakemen.

ing agreements were restored in full legal force and effect. The railroads contend that, despite the express terms of the Public Law and the Award, it continues until changed by collective bargaining. District Judge Holtzoff below rejected both these contentions, and continued the Award in a "new status" created by his decree.

### **National Diesel Agreement**

Inasmuch as this case involves the effects of special compulsory legislation upon collective bargaining, the appropriate point of departure is the last pertinent agreement between the parties achieved through the collective bargaining processes of the Railway Labor Act. This was the National Diesel Agreement, reached in May, 1950, after the parties had followed the procedures of the Act and had successfully engaged in free collective bargaining with respect to the question whether firemen\* should be employed on every locomotive (with exceptions not pertinent here). This Agreement was the most recent in a series of such agreements dating back to 1937 on a national basis and 1933 with individual railroads. The railroads parties hereto were signatories to either the National Diesel Agreement or other collective bargaining agreements containing identical provisions.\*\*

The nub of the National Diesel Agreement for present purposes is that it provided that a fireman, taken from the seniority ranks of the firemen, should be employed on all locomotives. This requirement, which the parties had voluntarily reached for their own reasons, defined the governing terms and conditions for the employment of

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\* The term "firemen" throughout this Brief refers to firemen and to firemen (helpers) and all classifications of employees other than engineers covered by collective bargaining agreements between the BLF&E and any of the railroads.

\*\* References hereinafter to "the National Diesel Agreement" include references to other agreements containing terms to identical effect.

firemen upon the nation's railroads, until the events culminating in the Public Law in 1963.

#### **Background of Public Law 88-108**

In November, 1959, almost a decade after the National Diesel Agreement was signed, the railroads served a Notice pursuant to Section 6 of the Act which proposed in essence to eliminate the requirement that firemen be employed in freight or yard service, and to establish a rule which in general would leave the employment of firemen completely to managerial discretion, in lieu of any collectively bargained agreement. (JA 5, 11, 60, 70-72, 76-77.) In September, 1960, various railroad Unions, including the BLF&E, served Notices under Section 6 of the Act which dealt with the subject of composition of the train and yard crews in yard and all classes of engine service. (JA 5-6, 17, 60-61, 73, 77.) After a succession of steps, including a special Presidential Study Commission, the National Mediation Board, litigation, an Emergency Board under the Act and the participation of the Secretary of Labor, the disputes remained unresolved; and the railroads announced that they would change the rules unilaterally, effective in July, 1963, causing the Unions to respond that a nationwide strike would be the result of any such action by the railroads. At this point, on July 22, 1963, President Kennedy sent a special message to Congress, proposing legislation to deal with the dispute on a temporary two-year basis. 109 Cong. Rec. 13004, H. Doc. No. 142, 88th Cong., 1st Sess. (1963).

#### **Public Law 88-108 and the Award of Arbitration Board 282**

As originally proposed by the President, the legislation assigned to the Interstate Commerce Commission the task of establishing the conditions which would be in force for the interim two-year period. There being objection to the Interstate Commerce Commission, Congress provided instead for a special Arbitration Board, but made no other

significant changes in the Presidential recommendations when it enacted the Public Law, which was signed by President Kennedy on August 28, 1963.

Arbitration Board 282 issued its Award on November 25, 1963. (JA 121.) With respect to firemen, the Award provided in effect that the railroads could designate, up to a ceiling of 90 per cent, certain positions from which firemen could be severed and which were not required to be filled upon being vacated; and that firemen who had less than two years of seniority could be severed upon payment of specified severance pay, those with more than two years but less than ten could be offered the option of a comparable job with a minimum of five years guaranty of employment therein or severance pay, and that firemen with more than ten years of seniority could not be severed. (JA 108-115.) The Award provided that it would remain in effect for a period of two years, unless the parties agreed on an extension (JA 121); and that all agreements previously applicable to firemen would, except as modified in the Award, continue to be in effect. (JA 108.) Pursuant to agreement of the parties, the expiration date of the Award was fixed at 12:01 A.M., March 31, 1966. (JA 9-10, 20-21, 67, 81.)

#### **Railroad Use of Award**

The Chairman of the Arbitration Board, Ralph Seward, testified that the Board believed that the number of firemen who would be severed under the Award would be 5,000 or 6,000. Hearings Before the Senate Committee on Commerce, on The Administration of Public Law 88-108, 89th Cong., 1st Sess. 364 (1965). Assistant Secretary of Labor for Labor-Management Affairs, James I. Reynolds, referred to 5,500, in testifying, "I believe that the number of firemen jobs which have been blanked and the number of firemen who have been removed since the period of the arbitration award has been far in excess of anything

which we had reason to believe would be the case during the negotiations." *Id.* at 466.

In fact, the railroads severed some 18,000 firemen during the time of the Award, approximately half the total number of firemen positions which had previously existed; and three times the anticipated number of 6,000. While the railroads paid separation allowances in the approximate amount of \$36,000,000 during the Award, they saved \$179,000,000 through the removal of firemen up to December 1, 1965. (JA 132.)

#### **BLF&E Section 6 Notices**

In October, 1965, after seventeen days of hearing upon the administration of the Award and the future of the firemen and other controversies in the railroad industry, the Senate Committee on Commerce passed a Resolution calling upon the parties to engage in further collective bargaining. (JA 142-144.) Pursuant to that Resolution, and to forestall dispute and attain agreement on the terms and conditions which were to be applied to the employment of firemen after the expiration of the Award, the BLF&E, in November, 1965, served three Notices; each Notice proposed an agreement to be effective at 12:01 A.M. on March 31, 1966, upon the expiration of the Award. (JA 132-134, 144-145, 147, 149.) Notice No. 1 related to the types of engine services upon which the employment of firemen would be required. (JA 144-147.) The effect of this would be a reduction of approximately 6,000 positions as compared with those which had been required by the National Diesel Agreement. (JA 144.) Notice No. 2 provided for the compensation to firemen who had been relocated, severed or otherwise disadvantaged by the operation of the Award. (JA 147-149.) Notice No. 3 set out a training program for apprentices. (JA 149-163.)

The railroads assumed the position that the Notices were all premature, and that Notices 2 and 3—although



not Notice No. 1—involved subject matter which was not bargainable under the Act. The railroads stated, however, that they would meet and confer with respect to these Notices, if the BLF&E so desired. (JA 134, 164-166.) Such meetings and conferences were held and completed with each of the railroads upon whom the Notices were served. In these conferences, the BLF&E attempted to discuss the merits of its proposals but the railroads resisted any such discussion. (JA 134.) Thereafter, the BLF&E sought the services of the National Mediation Board with respect to a number of the railroads. (JA 134-135, 167.) The Board docketed a number of cases, appointed a Mediator, and scheduled certain mediation conferences, but cancelled them upon the objection of the railroads, which relied in large part upon the pendency of the instant litigation. (JA 136-137, 171-184.)

#### **Inception of Litigation**

On February 17, 1966, the BLF&E instituted suit in the United States District Court for the Northern District of Illinois against sixteen major railroads as representatives of the class of the major carriers in the country, for declaratory judgment and injunctive relief to the effect that the railroads were required to observe the National Diesel Agreement upon the expiration of the Award on March 31, 1966. (JA 2-14.) A Motion for Preliminary Injunction was filed and noted for hearing. Instead of joining issue, the railroads moved to transfer the cause to the United States District Court for the District of Columbia, particularly on the ground that it should be consolidated with *Akron*, in which the BLF&E was not a party, which was then pending before Judge Holtzoff. On March 18, the Motion To Transfer The Cause was granted on this ground. (JA 37-40.) That case was docketed as Civil Action No. 784-66 in the Court below, on March 24, 1966. (JA 2.)

The railroads never moved to consolidate the case with *Akron*. To the contrary, on the same day that the trans-

ferred action was docketed below, March 24, 1966, the railroads filed suit against the BLF&E for declaratory judgment and injunctive relief, the case being docketed below as Civil Action No. 777-66. (JA 43.)

On March 28, in response to the railroads' request, the District Court granted a temporary restraining order against the BLF&E's striking "over any dispute as to the agreements, rules, regulations, interpretations, or practices to be applied by plaintiffs or any of them upon the expiration of the period during which the Award \* \* \* shall continue in force as an award \* \* \*." (JA 97.) This Order and subsequent Orders relating thereto and to alleged BLF&E contempt of a Court Order, will be before this Court in No. 20,316 which will be the subject of a Motion for argument with the instant cases, and will, accordingly, not be discussed herein. On the merits of the substantive issues between the parties, the subject of the instant cases, the parties went to trial upon a Stipulation of facts and issues. (JA 125-141, 222.)

#### **Decision of the District Court**

The District Court rejected *in toto* the BLF&E's position that the prior collective bargaining agreements were restored to full force and effect upon the termination of the Award. Although rejecting the theory of the railroads' contention that the Award continued, the District Judge nevertheless accomplished the ultimate result sought by the railroads. The District Court acted on the premise that it had power to select certain facets of the Award and prolong their legal effectiveness beyond the specified expiration date of the Award. "Since the effective period of the Award has expired, no affirmative steps may be taken under it," (JA 225) the Court held, but the firemen positions which the railroads had abolished during the Award were "permanently abolished," (JA 224) because "[t]he Award manifestly contemplated the eventual permanent abolition of the jobs of firemen on Diesel

engines in freight and yard service, except as to ten percent of that number . . .” (JA 223.) The Court acknowledged that the railroads could no longer sever firemen pursuant to the Award, but held also that the railroads were not required to fill (future firemen vacancies) since “[s]uch a course too would completely defeat the purpose and meaning of the Award, for the objective of the Award was to abrogate the use of unnecessary firemen . . .” (JA 224.) The net result of the Court’s ruling, as of the railroads’ contention, would be to reduce firemen jobs in freight and yard service to 10% of the collectively bargained level.

The District Court decided, further, that the BLF&E Notices which had been served while the Award was in effect could not “become effective until the day after the termination of the effective period of the Award.” (JA 225, 233-234.) In addition, the Court held that BLF&E Notices Nos. 1 and 2, which sought, respectively, conditions of employment for firemen different from those prescribed during the Award and certain reimbursements for damages incurred because of the Award, were illegal. (JA 226-228, 234-235.) They related, so the Court said, to the past and did not operate *in futuro* (JA 229-230), although the agreements they sought were expressly to be effective only at 12:01 A.M. on March 31, 1966. And the Court held that the subjects of these Notices were non-bargainable because agreement by the railroads “would be a consent to abrogate and do away with the outcome of the arbitration.” (JA 227.) The District Court thus in effect held that any BLF&E proposal for conditions more favorable to the firemen than those prescribed by the Award was invalid. And the Court so held in face of the fact that the railroads had not even asserted that Notice No. 1 was non-bargainable; nor had the parties stipulated this as one of the issues presented in the case. (JA 139-140.) The District Court was aware of this before it signed its Order, but deliberately extended the Judgment of non-bargainability to that Notice. (JA 207-208.)

### STATUTES INVOLVED

This case involves the Public Law which is set forth in its entirety in Appendix A to this Brief; and the Railway Labor Act and the Norris-LaGuardia Act, pertinent excerpts from which are set forth, respectively, in Appendices B and C.

### STATEMENT OF POINTS

1. Upon the expiration of the Award, the conditions applicable to the employment of firemen were restored to those provided in the National Diesel Agreement which had prevailed prior to the Public Law and the Award. The District Court erred in refusing to so find, and in granting continuing legal vitality to the Award.

2. The Notices served by the BLF&E in November, 1965, were valid and required the railroads to participate in bargaining under the Act; and the steps which were taken, pursuant thereto were valid under the Act. The District Court erred in refusing to so find and in holding that the Notices were premature because they were filed during the Award, and involved subjects which were legally non-bargainable.

3. The District Court lacked jurisdiction to enjoin the BLF&E, by virtue of the Norris-LaGuardia Act.

4. The District Judge (Holtzoff, J.) erred in refusing to grant the BLF&E's Motion to Disqualify and to recuse himself from any further participation in these matters.

### SUMMARY OF ARGUMENT

#### A

The basic question before this Court is whether Congress intended that the collective bargaining agreements in effect before it enacted the Public Law should regain their full legal force and effect at the expiration of the Award authorized by the Public Law. The BLF&E con-

tends that Congress so intended. The railroads contend that the Award remains in effect until they should consent to a change in collective bargaining, despite the express terms of the Public Law and of the Award confining the effectiveness of the Award to a two-year period unless extended by the agreement of the parties. The District Court rejected the BLF&E's position outright; while purporting to reject the railroads' contention, it in fact continued the Award in effect under terms laid down in its decree.

The BLF&E's position is established by the plain terms of the Public Law declaring that the time when the Award could be in force is "not to exceed two years from the date the award takes effect, unless the parties agree otherwise." When Congress thus expressly provided that the effectiveness of the Award was circumscribed in duration and could be extended only by agreement, it clearly expressed the intention that the Award could not be continued either by operation of law as the railroads contend or to whatever extent might be selected by a District Judge as the Court below held.

From its beginning in a special message of President Kennedy through the Congressional hearings, reports and debates, to its end in the express time limit imposed upon the Award, the legislative history of the Public Law evidences a clear and consistent Congressional intention to provide only an interim, temporary solution succeeded by restoration of the collective bargaining agreements previously in effect, in the absence of a new agreement. The Supreme Court, carefully considering this legislative history, has expressly held that the purpose and effect of the Public Law and the Award were interim and temporary. *Engineers v. Chicago, Rock Island & P. R. Co.*, 382 U.S. 423.

The District Court could not and did not challenge the express language of the Public Law and the Award, the uniform legislative history or the pertinent Supreme Court

decision, all of which rendered the Award an interim one-shot solution upon the expiration of which the *status quo ante* was reinstated. This clear Congressional intention should have ended the matter. But the District Court was not concerned, as it should have been, with ascertaining the intention of Congress but rather with appraising its reasonableness. Arrogating unto itself the right to pass upon the question of the reasonableness of a clear and unambiguous Congressional intention, the District Court, substituting its own views of public policy for that of Congress, answered its own question in the negative and continued the Award in effect.

Unreasonableness inheres not in the BLF&E's position but rather in that taken by the railroads and the District Court. The railroads simply ignore the termination point expressed and intended by Congress. The District Court's position is worse yet; although conceding that the Award has expired, it adopts a position the ultimate effect of which is identical with that of the railroads—reduction of firemen jobs to the 10% Award level. Rejecting the only two tangible sources for the definition of existing employment rights—the National Diesel Agreement and the Award—the District Court establishes a form of judicial labor relations trusteeship with its decree as the substitute for both collective bargaining agreement and Award. What started in Congress as an interim arbitration has ended up as a permanent judicial administration; a result so far removed from Congressional intention cannot stand.

### B

The District Court's Judgment that the Notices served by the BLF&E under the Act were premature created a patently arbitrary hiatus in collective bargaining. The BLF&E Notices proposed agreements to be effective only at the expiration of the Award. When the District Court held these Notices premature, it was decreeing that there

could be no new collective bargaining agreement reached by the parties to be effective at the terminal point of the Award. The inevitable hiatus thus imposed was clear error.

The District Court held that the railroads did not have to bargain on Notices Nos. 1 and 2. Notice No. 1 proposed specified exceptions to the requirement in the National Diesel Agreement that a fireman be employed on every locomotive. Notice No. 2 proposed the restoration of seniority rights of firemen removed during the Award with reimbursement for certain monetary losses. By ruling these Notices non-bargainable, the District Court rendered permanent the Award as continued in effect by its Judgment and banned forever any proposal by the BLF&E for more favorable manning conditions. This result is all the more incredible when it is recalled that the railroads never even contended that the basic notice, Notice No. 1, was non-bargainable.

Finally, the District Court's rulings on prematurity and non-bargainability flout the plain and reiterated policy of Congress to promote rather than prohibit collective bargaining. The Act embodies the decision of Congress that collective bargaining be the favored method of resolving all labor disputes in the railroad industry. The Public Law reiterates this Congressional policy. The decision of the District Court invalidating the BLF&E Notices is precisely contrary to the intention and expressions of Congress in both statutes.

### C

The District Court lacked jurisdiction to award injunctive relief against the BLF&E by virtue of the Norris-LaGuardia Act. This point is fully briefed in the other cases which are being heard at the same time as these appeals and we find it unnecessary to burden the Court with discussion thereof.



## D

The BLF&E made a Motion to Disqualify in the District Court and has appealed that ruling to this Court. The BLF&E is, however, seeking only limited relief on this issue in these cases.

## ARGUMENT

### I

#### THE NATIONAL DIESEL AGREEMENT REGAINED ITS FULL LEGAL FORCE UPON THE EXPIRATION OF THE AWARD.

##### A. The Express Terms of the Public Law Make the Award Interim in Character

This case turns on the legal life span of the Award which was authorized solely by the Public Law. The provisions of the Public Law, as enacted by the Congress, must be the framework for discussion. "After all, Congress expressed its purpose by words. It is for us to ascertain—neither to add nor to subtract, neither to delete nor to distort." 62 *Cases of Jam v. United States*, 340 U.S. 593, 596. In this case, in our view, the words of the Public Law are plain and unambiguous, and thus dispositive, in confining the Award to only interim legal effectiveness; they require the conclusion that pre-existing conditions were restored upon the expiration of the interim Award.

Section 8 of the Public Law provides, "This joint resolution shall expire one hundred and eighty days after the date of its enactment, except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence." The last sentence of Section 4 contains the wording which is critical to this case: "The award shall continue in force for such period as the arbitration board shall determine in its award, but *not to exceed two years from the date the award takes effect*, unless the parties agree otherwise."<sup>\*</sup>

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<sup>\*</sup> Emphasis is added throughout this Brief.



In these particular expressions there lurks no ambiguity. There is but one meaning possible for the phraseology, "not to exceed two years from the date the award takes effect." It denotes that two years is the maximum time which the Award can remain effective by its own terms. Beyond peradventure of doubt, any attempt by the Arbitration Board to provide that the Award could be legally in force for two years and one day, or any other time period in excess of two years, would have been patently *ultra vires* and invalid in the light of the terms of the Public Law.

Identically, there is but one meaning possible for the words, "unless the parties agree otherwise." They denote that the parties' agreement was the sole means provided for extending the Award past the two-year limit. Beyond any rational question, the Public Law permitted the Award to continue in effect by agreement of the parties and proscribes its continuation by any other means. There is no support for the notion that a party to the dispute could extend the effective period of the Award unilaterally, or that any administrative agency could, cf. *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, or that a District Court could extend it in any way. Obviously, if the Award was automatically extended in any event, as the railroads now contend and the Court below has now held, Congress would not have expressly provided in Section 4 of the Public Law that the Award bore a termination date which could be extended *only* by agreement of the parties.

Under the pellucid terms of the Public Law, the Award was to establish conditions of employment to be effective only for its rigidly circumscribed duration and could not be effective subsequent to its expiration. As the conditions imposed by the Award were interim and transitory only, the *status quo ante* was necessarily restored upon their expiration. It was the Award authorized by the Public Law which had suspended that *status quo*, and the Public Law

permitted that suspension for only a fixed life span. The Public Law specified that the conditions interposed by the Award could not be continued in effect, and provided for no alternative to the previously existing collective bargaining agreements for the definition of the conditions which would be applicable upon the expiration of the Award. Certainly there is nothing in the Public Law which intimates, let alone declares, any authority in the District Court to fashion those conditions. Accordingly, the text of the Public Law compels the conclusion that the conditions which preceded the Award, which had been established by collective bargaining, resumed their full legal effectiveness upon the expiration of the Award.

The text of the Public Law is dispositive. There is no need to consult the terms of the Award. The Award could not lawfully exceed the legal boundaries imposed by the Public Law which created the Arbitration Board and authorized the Award itself. "True indeed it is that administrative practice does not avail to overcome a statute so plain in its commands as to leave nothing for construction." *Norwegian Nitrogen Prod. Co. v. United States*, 288 U.S. 294, 315 (*per* Cardozo, J.). Likewise there is no necessity to consult the legislative history. "Having concluded that the provisions of [the statutory Section involved] are clear and unequivocal on their face, we find no need to resort to the legislative history of the Act." *United States v. Oregon*, 366 U.S. 643, 648; *Ex Parte Collett*, 337 U.S. 55, 61. If the Award and the legislative history are consulted, however, they reinforce and corroborate the plain meaning of the Congressional expressions enacted in the Public Law.

**B. The Provisions of the Award Demonstrate That It Was Interim Only and That Prior Rules Were To Continue in Effect**

Part IV of the Award, in faithful adherence to the Congressional prescription and intention, provides, "This

Award shall continue in force for two years from the date it takes effect, unless the parties agree otherwise." (JA 121.) The Award thus carried its own terminal date.

The Arbitration Board was aware that there were agreements in existence, and that there would continue to be railroad service, requiring some conditions of employment to be effective after its Award expired. It expressly included in the Award a Saving Clause which preserved agreements and other provisions in effect, and continued them except as modified by the terms of the Award which subsisted only for the two-year period. This Clause is in Part II of the Award dealing with firemen. Addressed solely to the firemen issue, the Award provides, "All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award." (JA 108.) The Board was evidently aware that the conditions it was imposing for the interim period would terminate with the expiration of the Award which prescribed them, leaving the pre-existing *status quo* in effect. The Board thus recognized its Award was a bridge over an interim period, from the pre-existing conditions to other conditions if agreement were reached by the time the Award expired, and if not, back to the pre-existing conditions.

If the Public Law were ambiguous to any degree—which we submit it was not—this contemporaneous administrative interpretation, this recognition by the Arbitration Board that the Award was interim in character and finite in duration, would be determinative. "The [administrative] practice has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Prod. Co. v. United States*, *loc. cit. supra*; *Udall v.*

*Tallman*, 380 U.S. 1, 16. This practice is consonant with the conclusion that the pre-existing conditions of employ-  
men, having been deliberately suspended for only a par-  
ticular temporary time, were reinstated in full legal vigor  
upon the expiration of the Award.

**C. The Legislative History of the Public Law Demonstrates  
That Congress Meant To Provide Only an Interim, Tem-  
porary Solution To Be Succeeded By Restoration of the  
Collective Bargaining Agreements Previously in Effect, in  
the Absence of a New Agreement**

**1. Presidential Message Proposing Public Law**

In his Special Message to Congress proposing enactment  
of a special statute to forestall the imminent railroad  
strike, President Kennedy expressly declared that among  
his objectives were:

“to find a solution which—• • •

“(2) encourages the parties to achieve their own  
solutions through collective bargaining • • • and

“(5) provides for an *interim remedy* while awaiting  
the results of further bargaining by the parties.” 109  
Cong. Rec. 13004, 13006, H. Doc. No. 142, 88th Cong.,  
1st Sess. (1963).

He recommended that:

“for a 2-year period during which both the parties  
and the public can better inform themselves on this  
problem • • • *interim work rules changes* proposed  
by either party to which both parties cannot agree  
should be submitted for approval, disapproval or modi-  
fication to the Interstate Commerce Commission • • •.”  
*Ibid.*

President Kennedy emphasized that he was recommend-  
ing “only interim changes,” *Ibid.*, “interim rules and  
these temporary procedures • • •.” *Ibid.* The President  
reiterated that he was not recommending “a general and  
permanent compulsory arbitration law,” *Id.* at 13007, but

only an interim remedy which would be definitely limited in time and effectiveness so as to accord preference always to collective bargaining. "The measure I am recommending today," he pointed out, "in contrast with compulsory arbitration, gives encouragement and preference to solutions reached by collective bargaining, and provides only for interim decisions." *Ibid.*

The President recommended that the issue of the interim two-year solution be presented to the Interstate Commerce Commission. Opposition to the Commission developed in the course of the hearings and the Congressional discussion, and the Law as ultimately enacted provided for an arbitration board rather than the Commission. This was the only significant change made by Congress in the Presidential recommendation. *Engineers v. Chicago, Rock Island & P.R. Co.*, 382 U.S. 423, 432-433. Accordingly, the legislative history of the Public Law is a sound basis upon which to adjudicate its meaning. *Engineers v. Chicago, Rock Island & P.R. Co.*, *supra*.

## 2. Congressional Committee Reports

a. *Senate.* The Report of the Senate Committee on Commerce on the Administration measure emphasized its interim character. It declared that:

"This proposal is not and cannot conceivably be considered as a precedent \* \* \*. It is what it purports to be—a one-shot solution \* \* \*." Sen. Rep. No. 459, 88th Cong., 1st Sess. 7 (1963).

It expressly stated that:

"Under the terms of the resolution, the arbitration award would be binding for no more than 2 years, unless the parties mutually agree to a different period. The Committee has imposed this limitation in harmony with the President's recommendation, in order to closely limit the scope and impact of the resolution." *Id.* at 10.

Again, in discussing Section 4, the duration clause, the Report pointed out:

“This section would further provide that the Board would determine the period for which its award would remain in force, but would be no longer than 2 years unless the parties agreed otherwise.” *Id.* at 11.

b. *House of Representatives.* The House Committee on Interstate and Foreign Commerce similarly called attention to the limited duration of the legislation:

“The arbitration award is to be in effect for the period determined by the arbitration board but that period cannot exceed 2 years from the date the award takes effect; however, the award can be in effect for a different period if the parties agree thereto.” H.R. Rep. No. 713, 88th Cong., 1st Sess. 14 (1963).

As to Section 4, the Committee stated:

“With respect to the two principal issues, the resolution will remain in effect insofar as concerns the provisions of the last sentence of section 4. That sentence provides that the arbitration award covering the fireman (helper) and crew consist issues will continue in effect for a period not to exceed 2 years from the date it takes effect unless the parties agree to a different period. This means that no change in rates of pay, rules, or working conditions, and no strike or lockout over any dispute involving these matters, may occur with respect to these issues covered by arbitration for 2 years after the arbitration award is filed, except by agreement of the parties.” *Id.* at 15.

### 3. Congressional Debates

a. *Senate.* In the floor debate on the Joint Resolution, the expressly delimited duration of the Award was specifically discussed.

Senator Magnuson, Chairman of the Senate Commerce Committee from which the Bill emanated, for example, used these words:

"In other words, Mr. President, *this is a one-shot operation*, forced upon the Congress and its committees by a singular and extraordinary circumstance, and involving parties unique in management-labor relations and in their relation to the welfare of the Nation \* \* \*." 109 Cong. Rec. 15891 (1963).

Senator Morse likewise focused upon the circumscribed duration of the changes to be made. He said:

"It is in the light of these interim rules that Senate Joint Resolution 102 would encourage and stimulate the parties to continue to bargain in order to develop final solutions of these and of all other remaining issues."

*must be  
reverted to  
all time!*

• • •

It appears to be the intention in this section, read in the light of the scheme of the resolution and of the legislative background, that these rules will provide a basis for the manning of the trains *for the interim period only*.

"Stated conversely, the resolution does not authorize the Commission to approve rules which are dispositive of the entire manning issue for the indefinite future. *The emphasis is on interim work rule procedures to be effective only* until such time as the parties reach agreement regarding the entire matter or *2 years following the interim rule goes into effect*, whichever occurs sooner." *Id.* at 15976.

b. *House of Representatives.* Chairman Harris of the House Interstate and Foreign Commerce Committee, which handled this Bill, specifically advised the House that the pre-Award situation would be restored at the expiration of the Award, as though the legislation had never been enacted. He said:

"So we have been trying to take a course that would bring these issues to final resolution where they could be settled. The resolution provides that on the two major issues, order of the arbitration board would be in force for a period of 2 years. Then the issues go



back under the regular established procedure of collective bargaining." 109 Cong. Rec. 16128 (1963).

Shortly after this statement, he engaged in the following directly pertinent colloquy.

"Mr. FULTON of Pennsylvania. The question here is whether it will be possible for anybody to strike; when is that time?

• • •

"Mr. HARRIS. Under the amendment that would be adopted to conform to the Senate resolution, it will be 180 days.

"Mr. FULTON of Pennsylvania. And at the end of a 2-year period that these arbitration rulings have been in effect, what would happen then?

"Mr. HARRIS. As I explained a moment ago, it goes back to the usual collective bargaining processes.

"Mr. FULTON of Pennsylvania. *So then it is as if this resolution has never been passed at that time?*

"Mr. HARRIS. *That is true.*" *Id.* at 16130.

Further, in the House debates, Congressman Smith of Virginia stated that "this joint resolution provides that this arbitration award is for a period of 2 years after the effective date of the award. At the end of that 2 years the whole controversy may flare up again and we may have to deal with it at another time." *Id.* at 16120.

Congressman Brown of Ohio expressed a similar opinion:

"I do believe this settlement could be used and would apply for maybe 150 days or 180 days, and perhaps for 2 years, depending on which resolution is adopted. Of course, then, another strike could start afterward. On the other hand, labor and management would be free to go ahead and settle their own differences by collective bargaining before the board of arbitration might come out with its decision, if they wished to." *Id.* at 16121.



#### 4. Legislative Hearings

a. *Senate.* Testifying in support of the Administration recommendation before the Senate Committee on Commerce, Secretary of Labor Wirtz emphasized and clarified the two-year interim limitation upon any decision modifying terms of employment as follows:

"Senator PASTORE. Now as a practical question, you say that this procedure is initiated by application. The matter is heard by the ICC and the determination is made. *The determination will last only for a period of two years. It is a temporary resolution; is that correct?*

"Secretary WIRTZ. I would assume, Mr. Chairman in complete good faith within that 2-year period the parties would have worked out the resolution of this matter. If they would not, *the effectiveness of that rule would terminate at the end of the 2-year period unless other action were taken.*" Hearings Before the Senate Committee on Commerce, on S.J. Res. 102, 88th Cong., 1st Sess. 49-50 (1963).

Indeed, even the principal spokesman for the railroads, J. E. Wolfe, Chairman of the National Railway Labor Conference and subsequently a railroad designated member of the Arbitration Board, testified that the solution to be provided would be strictly interim. He said:

"I think that I agree with the description of that resolution by Mr. Wirtz, Secretary of Labor, that it does give the Interstate Commerce Commission the authority to establish interim rules. And during that period it contemplates that the parties themselves, as they eventually will have to do sometime or another, will finally dispose of these long, drawnout disputes by collective bargaining." *Id.* at 364.

Further, in discussing the changes in rules which might be made, the following colloquy occurred:

"Senator MONROE. So the change, the possibility—

"Mr. WOLFE. For 2 years.

"Senator MONBONEY. For 2 years only?

"Mr. WOLFE. Yes, sir.

"Senator MONBONEY. Then they expire?

"Mr. WOLFE. Yes, sir." *Ibid.*

Again, Mr. Wolfe expressly recognized that Section 4 of the proposal which became the Public Law restricted the effective period to two years:

"Senator HARTKE. Isn't the action which would be taken here going to be final?

"Mr. WOLFE. For a period of 2 years.

"Senator HARTKE. Where does it say it won't be final after that?

"Mr. WOLFE. Section 4." *Id.* at 370-371.

b. *House.* Secretary Wirtz likewise emphasized the two-year limitation in his testimony before the House Committee on Interstate and Foreign Commerce:

"Mr. SPRINGER. At the end of the 2-year period for which the order is entered where are you then on the same rule?

"Secretary WIRTZ. The interim rule would at that point no longer be effective.

"Mr. SPRINGER. You would be back exactly where you are this morning?

"Secretary WIRTZ. I don't know what you mean by where we are this morning. If the parties had not accomplished anything at all in the 4-year period to which you refer, which is contrary to every reasonable expectation in this case, if they had accomplished nothing, then we would be, and none of them had accomplished anything, *then we would face the same situation we do now.* Hearings Before the House Committee on Interstate and Foreign Commerce, on H.J. Res. 565, 88th Cong., 1st Sess. 55-56 (1963).

"Mr. ROGERS of Texas. With regard to the 2-year situation that is involved here, I understand that regardless of the judicial review or request for judicial review that whatever decision is made by the Interstate Commerce Commission, that decision goes into effect and stays in effect until either the parties reach an agreement by collective bargaining or the 2-year period expires?

"Secretary WERTZ. That is right." *Id.* at 59.

The Chairman of the Interstate Commerce Commission, Lawrence K. Walrath, testified that the changes in terms of employment would be limited to two years.

"Mr. WALRATH. I would say as to matters under section 4 that there is no question as the language is now written that our order would be operative for a period of 2 years from the entry thereof unless the parties superseded it by an agreement. From the time it goes into effect, I should say. \* \* \*

"From the day our order became effective on issues under section 4 I think there is no question it would continue to be operative until the expiration of 2 years from the effective date of the order." *Id.* at 607.

\* \* \*

"Mr. ROGERS of Texas. Mr. Walrath, as I see this matter as it has been presented, this resolution would actually call upon you as a body to simply provide the approval of rules to be used during the time of collective bargaining but *not to exceed 2 years*.

"Is that your understanding?

"Mr. WALRATH. Approval, modification, or disapproval, as it might require. But certainly when something was approved, as you say, it would be effective no longer than a period of 2 years. It is hoped that the measure would encourage continued bargaining and at any moment the parties could supersede anything we had found proper. *Id.* at 591.

Mr. Wolfe, the railroads' spokesman, reiterated the temporary character of the legislation to the House Com-

mittee. He declared, "• • • it is our conclusion that it will as a temporary measure solve this present problem." *Id.* at 552. Further, when Congressman Moss noted that the railroads "are not seeking here, nor does the resolution, any elements of compulsion other than *purely interim* compulsion • • •?", Mr. Wolfe replied, "I so understand the resolution." *Id.* at 570. When questioned by Congressman Dingell as to whether two years would be a sufficient time, Mr. Wolfe, replied, "I believe that we consider that *interim proposition* is such as this, that 2 years is about as far as we should go." *Id.* at 555.

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From beginning to end, the legislative history is replete with evidence of Congressional intention to provide only an interim, temporary solution succeeded by restoration of the collective bargaining agreements previously in effect, in the absence of a new agreement. President Kennedy proposed only "an interim remedy". The reports of both the Senate and House Committees stressed the two-year limitation "in harmony with the President's recommendation." The Chairmen of both the relevant committees referred on the floor of Congress to the interim nature of the legislative remedy; and the House Chairman, Congressman Harris, advised the House that upon expiration of the Award, "it is as if this resolution had never been passed • • • ." The principal Administration spokesman, Secretary of Labor Wirtz, made clear at the hearings that, if collective bargaining during the interim of the Award availed nothing, "then we would face the same situation we do now". Chairman Walrath of the Interstate Commerce Commission, another Administration spokesman, expressly stated that the Award "would be effective no longer than a period of 2 years." Even J. E. Wolfe, speaking for the railroad industry, referred to the resolution as "an interim proposition" and concluded "that 2 years is about as far as we should go."

**D. The Supreme Court Has Ruled That the Solution Provided by the Public Law and the Award Was Temporary; and Has Also Warned Against Judicial Intrusion in the Railroad Industry Upon Conditions Established by Collective Bargaining**

**1. *Engineers v. Chicago, Rock Island & P.R. Co.*, 382 U.S. 423**

The Supreme Court considered the text of the Public Law and the Award and the legislative history of the Public Law in the recent case of *Engineers v. Chicago, Rock Island & P.R. Co.*, 382 U.S. 423 ("*Rock Island*" hereinafter); and held that the purpose and effect of the Law were temporary and not permanent. The issue in that case was whether state laws specifying the number of men required for safety on a train crew, the so-called "full-crew laws," were pre-empted by the Public Law and the Award. The railroad argued that the Public Law and the Award were intended to provide such fundamental and permanent conditions that state legislation inconsistent therewith was necessarily invalidated. The Court rejected this contention and held these state laws had not been pre-empted precisely because Congress intended and provided that the Award could have only temporary legal effect.

The Court discussed the legislative history of the Public Law. The Court took note of the fact that "the President recommended legislation to provide 'for an interim remedy while awaiting the results of further bargaining by the parties,'" to provide for "'interim work rules changes.'" 382 U.S. at 431. The Court summarized the Presidential Message as eschewing any permanent solution or desire to affect the fundamental structure of labor relations and collective bargaining in the railroad industry. *Id.* at 432. The Court called attention to the fact that the Award "was to be a complete and final disposition of these issues for a period not exceeding two years from the date the awards would take effect." *Id.* at 433. Ac-

according to the Supreme Court, "Congress wanted to do as little as possible in solving the dispute which was before it . . . ." *Ibid.* This holding that the Public Law envisaged only a minimum, temporary prescription was dissented from only by Mr. Justice Douglas, *id.* at 438, whose opinion relies upon the proposition that the Award was intended to be a major, permanent solution of the problems covered, a proposition urged by the railroads in this case and accepted by the Court below, but rejected by the preponderant Supreme Court majority.

**2. *Clerks v. Florida East Coast R. Co.* 384 U.S. 238**

The recent decision in *Clerks v. Florida East Coast R. Co.*, 384 U.S. 238 ("*Florida East Coast*" hereinafter), demonstrates that the most recent collective bargaining agreement is the compass which must guide the Court in railroad labor matters. In that case, while permitting the District Court to decree minimum changes in pre-existing collective bargaining agreements required to maintain railroad operations during a prolonged strike, the Supreme Court was emphatic in restricting the judicial power to create new terms and conditions of railroad employment as narrowly as possible:

"At the same time, any power to change or revise the basic collective agreement must be closely confined and supervised. These collective agreements are the product of years of struggle and negotiation; they represent the rules governing the community of striking employees and the carrier. That community is not destroyed by the strike, as the strike represents only an interruption in the continuity of the relation." *Id.* at 246-247.

The Court declared:

"The collective agreement remains the norm . . . ." *Id.* at 248.

In this case, identically, the power of the District Court must be closely confined and supervised; and there being no such special circumstance as alone justified the judicial intervention in *Florida East Coast*, the judgment below cannot be sustained. There is no warrant for the District Court's arrogation of power to define the terms and conditions of railroad employment which must now be obeyed. The collective agreements here involved, particularly the National Diesel Agreement, were carefully negotiated and represented the rules prevailing prior to the Award. The community of legal relationship between the BLF&E and the railroads was not destroyed by the Award; the Award represented only an interruption in the continuity of a relationship otherwise maintained by collective bargaining. The collective agreement remains the norm which this Court should enforce.

The Court was emphatic in *Florida East Coast* that the terms and conditions imposed by the District Court would last only for the duration of the strike, and that upon the expiration of the strike, the previously existing conditions would be restored. The Supreme Court's holding to this effect is directly in point here:

"In this connection, it bears emphasis that the District Court's authorization to deviate in part from the collective bargaining agreement would, as FEC readily concedes, terminate at the conclusion of the strike. At that time, the terms of the earlier collective bargaining agreement, except as modified by any new agreement of the parties, would be fully in force." *Id.* at 247, n. 7.

Likewise, any legal authorization to deviate from the National Diesel Agreement would terminate at the conclusion of the Award. At that time, the terms of the earlier collective bargaining agreements between the BLF&E and the railroads, in the absence of new collective bargaining agreements, would become again fully in force.



### 3. The Decision Below Violates the Stricture of *Rock Island* and the Spirit of *Florida East Coast*

The Supreme Court held in *Florida East Coast* that "The collective bargaining agreement remains the norm" in the railroad industry. The Supreme Court held in *Rock Island* that "Congress wanted to do as little as possible in solving the dispute which was before it," and provided only an "'interim remedy.'" Ineluctably, the norm was not displaced except for the interim period. The District Court was under the duty to recognize that the norm had been restored; and its Judgment, substituting terms and conditions of its own definition for those previously established by the parties themselves, must accordingly be reversed. The National Diesel Agreement was reinstated in full legal effect upon the expiration of the Award.

#### E. The BLF&E's Position That Prior Collective Bargaining Agreements Are Restored in Full Force Upon the Expiration of the Award Is Not Unreasonable

The District Court could not and did not challenge the clear language of the Public Law and the Award and the uniform legislative history set forth above rendering the compulsory arbitration proceeding an interim one-shot proposition upon the expiration of which the *status quo ante* was to be restored. This should have ended the matter, for a District Court is not a "law maker" but a "law interpreter" with the task of:

"\* \* \* interpreting the law as it now stands. In dealing with problems of interpretation and application of federal statutes, we have no power to change deliberate choices of legislative policy that Congress has made within its constitutional powers. Where Congressional intent is discernible—and here it seems crystal clear—we must give effect to that intent." *Sinclair Refining Company v. Atkinson*, 370 U.S. 195, 215.



The District Judge refused to accept this limited judicial role and arrogated to himself the role of "law-maker." Announcing that it was his duty to give the Public Law "a reasonable and sensible construction," (JA 223) he apparently found it unreasonable to require the railroads "to rehire firemen whose positions have been abolished" during the Award (*ibid.*), or to wipe out "vested rights of those firemen who were accorded permanent protection by the Award . . . ." (JA 224.) All apart from the indisputable proposition established in the previous paragraph that these matters were for the Congress—not the District Court—to decide, the District Court was here flailing at a straw man nowhere involved in the case.

The BLF&E *never* contended and does *not now* contend that the rights of individual firemen are not "vested" or that they can somehow be "wiped out"; likewise there is no contention that any particular fireman will have to be rehired. There is a clear distinction between vested rights of individual employees and rights relating to jobs or positions. An individual employee who becomes entitled during the life of a collective bargaining contract to such accrued rights as severance pay, vacation eligibility or pensions, to take familiar examples, cannot be deprived of them after the expiration of the agreement; his right has vested and rests upon his past service.\*

The question here is whether locomotives operating after the expiration of the Award must be operated in accordance with the National Diesel Agreement. An affirmative answer to that question imposes certain manning requirements upon the railroads, and makes available firemen positions to be filled according to the seniority lists and applicable rules in force at the time the particu-

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\* See, e.g., *Zdanok v. Glidden Company*, 2nd Cir., 238 F. 2d 99, *aff'd. on other grounds*, 370 U.S. 530; *Valoo v. J.I. Case Co.*, 18 Wis. 2d 578, 119 N.W. 2d 384; *Empire Textile Corp.*, 44 LA 979 (Scheiber); *United Food Management Services, Inc.*, 41 LA 76 (Blumrosen); *Brooklyn Eagle, Inc.*, 32 LA 156 (Wirtz).

lar vacancy is to be filled. An affirmative answer to that question conveys no rights to any individual fireman and it deprives him of none of his rights. The railroads obtained a right to abolish certain firemen positions by virtue of the Award, a right which they did not have previously under their bargaining agreements. This is the right, created solely by the Award, which the railroads wish to exercise for an indefinite period of time after the expiration of the Award; and this is the right which in fact the District Court maintained in effect permanently for the railroads without any regard for the express terminal point imposed upon the Award by Congress. The District Court raised an issue of rehiring and vested rights not raised by the parties or in any way involved in this case and then used that issue to denounce as unreasonable what Congress so clearly and reasonably intended.

The District Court also seemed to find something unreasonable in the rehiring of the approximately 18,000 firemen who had been severed. (JA 222-223, 132.) All apart from the point just made that no individual would have to be rehired, the number of firemen positions vacated during the Award is no basis for ascribing Congressional intention in enacting the Public Law preceding the Award. Moreover, as pointed out above, pp. 5-6, *supra*, the clear assumption of the Administration in proposing the legislation and of the public members of the Arbitration Board in making their Award was that only some 5,000 or 6,000 firemen would actually be severed. The fact that the railroads were able to triple this number can hardly be deemed evidence of what Congress or the Arbitration Board, acting under the Congressional instructions, intended on the question of post-Award manning; or to support Judge Holtzoff who, purporting to carry out the intent of an Arbitration Board anticipating less than 6,000 removals, not only makes permanent the loss of 18,000 fireman positions during the Award but also insures the loss of 10,000 or 15,000 additional fireman positions. Actually, too, far

less than 18,000 firemen would have had to be hired if the railroads ever began to bargain; the BLF&E's Notice No. 1 itself proposed a reduction of 6,000 positions as a basis for bargaining. Furthermore, the post-Award manning would be divided among 180 railroads with no serious consequences to any. The District Court, under a cloak of unreasonableness which does not exist, sought to avoid the intent of Congress which should have been the sole guide for its action.

**F. The Railroads' Position That the Award Continues in Effect Is Wholly Unreasonable**

The railroads take the position that the terms of the Award become assimilated into the enduring relationship between themselves and the BLF&E, so that the Award is frozen in effect just as if it had never expired unless and until *they* should agree to a change through future collective bargaining. In other words, the Award becomes permanent subject only to the willingness of the railroads, in all their majesty, to change it.\* This position simply disregards the termination point expressed and intended by the Congress. To accept the railroads' position is to render the expiration clause quite meaningless and superfluous. "Congress is not to be presumed to have used words for no purpose." *Platt v. Union Pacific R.R. Co.*, 99 U.S. 48, 58; *Born v. Allen*, 110 U.S. App. D.C. 217, 223, 291 F. 2d 345, 351.

Moreover, the railroads' position arbitrarily equates compulsory arbitration with voluntary collective bargaining agreement. The Public Law certainly provided for compulsory arbitration—the establishment of employment conditions by third parties, the neutral members of the Arbitration Board, under compulsion of Federal Law. Yet the fundamental proposition advanced by the railroads

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\* Now, of course, in supporting the District Court ruling that Notice No. 1 is not bargainable, they go even further and argue in effect that the Award cannot be changed at all. See pp. 38-39, *infra*.

is that this Congressionally-legislated Award must be deemed an "agreement" within the meaning of the Railway Labor Act, and they argue this in the face of the obvious fact that agreement is the antonym not the synonym of compulsory arbitration. The railroads seek to have the Court ascribe the same status to the terms established by the Award imposed by compulsion as if they had been incorporated by the parties themselves in a collective bargaining agreement. They disregard Section 4 of the Public Law in which Congress, permitting extension of the Award if "the parties agree," manifestly recognized the contrast between the compulsory Award and the voluntary agreement of the parties. They seek to have Section 6 of the Railway Labor Act, which prohibits effectuating "an intended change in *agreements*" until the procedures of the Act have been exhausted, embrace a change in the terms established by the Award. They cite *Manning v. American Airlines, Inc.*, 2nd Cir., 329 F. 2d 32, although the case involved a collective bargaining agreement and asserted the supremacy of Section 6 over the apparently conflicting terms of an *agreement*. But the Award was not an agreement and is not an agreement; and the Public Law imposed the two-year quietus on the Award.

The Public Law, special and particular legislation enacted by Congress in manifestly full contemplation of the Act and deliberate accommodation with it, must be honored—assuming contrary to fact, that there is any conflict with Section 6. It "is familiar law that a specific statute controls over a general one" even where the specific statute was earlier enacted. *Bulova Watch Co. v. United States*, 365 U.S. 753, 758. Here, of course, the specific statute was the later, by over forty years.\*

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\* It is appropriate to reiterate at this point that the railroads' position and the District Court's position are identical in ultimate effect. If the railroads' position were to be accepted, the Award continues and the railroads can take such action thereunder as they deem appropriate to reduce the number of firemen to 10% of the freight and yard jobs. Under the District Court's opinion, the railroads cannot take further "affirmative" action but, since

**G. The District Court's Position Is Even More Unreasonable Than That of the Railroads**

The District Court opinion defies rational analysis. At one point the District Court concedes that "the effective period of the Award has expired." (JA 225.) But almost immediately thereafter the District Court announces that "[t]he situation must be deemed frozen as of the close of the effective period of the Award" and that "a new status was created by the Award." *Ibid.* Bluntly put, the District Court has ruled that the Award has "expired" but remains in effect. Indeed, giving new life to the Award, the Court substitutes itself for the expired Arbitration Board as the administrator of the reduction of firemen positions to the 10% level.

The District Judge has created an unprecedented legal no man's land. He has explicitly held that the collective bargaining agreements prior to the Award are not restored in effect. (JA 222-223, 228, 233.) He has said that the Award "has expired" and "no affirmative steps may be taken under it". Nothing is in effect to guide the parties as to the rights of the BLF&E and the obligations of the railroads to man the locomotives with firemen. The decree in this case becomes the collective bargaining agreement and Award; the District Court arrogates to itself the position of Labor Relations Czar in a myriad of situations.

Having rejected the only two tangible sources for the definition of existing employment rights—the National Diesel Agreement and the Award—the Court was relegated to a process of distillation from implicit rather than overt "intention" in the expired Award. Caught be-

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they have to replace no one, attrition will reduce the number of firemen to the same 10% of the freight and yard jobs in the not too distant future. The only difference between the two positions is that it will take longer to get to this 10% figure under the Judge's ruling. Both positions create legislative permanence where Congress intended only an interim solution.

tween the Scylla of the Diesel Agreement it *would* not honor and the Charybdis of the expired Award it *could* not honor, the Court chose to steer an independent course in the manner of an arbitrator empowered to create rather than to construe contract rights. In effect the Court has established a form of judicial trusteeship for implementation of existing and future rights arising neither from contract nor statute but rather from the assumed artistry of the District Court. See discussion of *Florida East Coast*, pp. 28-30, *supra*.

Already situations have begun to accumulate for judicial resolution which would have been settled by the terms of the collective bargaining agreement before the Award and by the Arbitration Board during the Award. One example, presently before Judge Holtzoff, is *Brotherhood of Locomotive Firemen and Enginemen v. New York Central Railroad*, Civil Action No. 1686-66. There the railroads ordered nine firemen living in Illinois uprooted from their homes and transferred to Indiana to fill the requirement of the State's full-crew law. A temporary restraining order holds the situation in *status quo* until September when the District Court will announce whether under its decree the railroads can or cannot shift these nine men away from their permanent jobs.

In another situation, one of the appellee railroads, Galveston Wharves, informed the BLF&E that certain men with less than two years seniority who were working part time were to be furloughed and their part time positions taken by full time workers with two to ten years seniority. The BLF&E informed the railroad that it would bring suit to prevent this despoliation of the rights of both groups and the railroad announced it would "*temporarily*" withhold the action.

Case after case of this nature is piling up under the District Judge's ruling. He and he alone will decide what may be done in each one, subject to review in this

Court. What started in Congress as an interim arbitration has ended up as a permanent judicial administration, with historical collective bargaining agreements buried. A result so far removed from Congressional intention cannot stand.

## II

### **THE BLF&E'S NOTICES UNDER SECTION 6 WERE BOTH TIMELY AND BARGAINABLE**

In November, 1965, while the Award was still in effect, the BLF&E served upon the railroads three Notices under Section 6 of the Act, each proposing a change in the collective bargaining agreements between the BLF&E and the railroads to be effective as of 12:01 A.M., March 31, 1966, upon the expiration of the Award. Notice No. 1 proposed specified exceptions to the requirement in the National Diesel Agreement that a fireman be employed on every locomotive. Notice No. 2 proposed the restoration of seniority rights of those firemen whose employment and seniority were terminated during the Award, with reimbursement for any monetary losses sustained as a result of improper termination, inconvenience and deprivation of seniority rights. Notice No. 3 proposed an apprenticeship program.

The District Court held that all three Notices were premature because they were served during the Award; and held that Notices Nos. 1 and 2 were not bargainable under the Act because they sought to set aside a provision of the Award. The Judgment below would thus engraft the Award, limited by its terms to two years, as a permanent feature of the parties' collective bargaining agreement and continuing relationship. By holding non-bargainable the Section 6 Notice proposing revision of the manning agreement, the Court would make the BLF&E a perpetual captive of the arbitration Award, bereft forever of its rights to seek any change through the procedures of the Act.



**A. The District Court's Judgment That the BLF&E Notices Were Premature Created a Patently Arbitrary Hiatus in Collective Bargaining**

The District Court declared that the BLF&E Notices under Section 6 of the Act were premature because they were served when the Award was still in effect, even though they proposed agreements to be effective only at the expiration of the Award. Under this holding, bargaining under the procedures of the Act about the conditions to be applicable upon the expiration of the Award could not even be commenced until after the expiration had already occurred. The parties could not even begin to discuss the BLF&E proposals until after the time they were to become effective. In essence the District Court decreed that there could be no new collective bargaining agreement reached by the parties to be effective as of the terminal point of the Award.

The District Court thus imposed an inevitable hiatus in up-to-date collective bargaining between the parties. The Court made it impossible for the Act to fulfill its normal function of insuring bargaining between the parties prior to the time proposed changes in agreements are to take effect. This is an utterly arbitrary and unreasonable result, patently offensive to the purposes of the Act and the common sense of collective bargaining. The District Court committed manifest error in branding the Notices as premature.

**B. The Judgment That BLF&E Notices Nos. 1 and 2 Are Non-Bargainable Renders the Employment Conditions Created By the District Court Impervious To Change By Collective Bargaining and Maintains Them in Effect Permanently**

The District Court ruled that the agreements proposed by BLF&E Notices Nos. 1 and 2 were non-bargainable under the Act because they contained conditions which were inconsistent with those imposed by the Award. The District Court declared that no proposal could ever be lawful which seeks "directly or indirectly, to set aside any pro-



visions of the Award, or the operations or activities that have taken place under it or the results that have been achieved"; or which "proposes that the carriers should hire and place on the firemen's seniority roster a sufficient number of firemen to comply with the provisions of the notice"; or which in any way could be interpreted by the District Court as "a consent to abrogate and to do away with the outcome of the arbitration." (JA 226-227.) Obviously, *any* proposal by the BLF&E for manning conditions more favorable to the firemen than those dictated by the Award as continued in effect by the District Court Judgment would be beyond the pale under these formulations.

By this stroke, the Court below has rendered the Award and its Judgment impervious to any BLF&E proposal for change, and *a fortiori*, to any practical possibility of being altered by collective bargaining agreement. Obviously the railroads will never agree to any change beneficial to the firemen if they are not subjected to the collective bargaining processes of the Railway Labor Act. Consequently the holding that BLF&E Notices Nos. 1 and 2 are non-bargainable maintains the conditions created by the District Court permanently in effect.\*

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\* Actually, the railroads never even took the position that Notice No. 1 was non-bargainable, although they raised this objection to the other BLF&E Notices. Notice No. 1 was not addressed to the Award but to the National Diesel Agreement which has over the years been a subject of bargaining between the parties with no one suggesting it could possibly be illegal until the pronouncement below. The issue of the bargainability of Notice No. 1 was not presented to the Court for decision under the parties' Stipulation. (JA 139.) Obviously the BLF&E never had any opportunity to be heard, and *a fortiori* none to accord with the minimum requirements of Due Process, on the issue of the bargainability of Notice No. 1. The Court maintained its holding on this Notice even though its attention was called, prior to its signing the Judgment proposed by the railroads, to the fact that the issue had not been submitted to it nor argued before it. (JA 207-208.)

It is noted in the previous paragraph that the railroads did not contend that Notice No. 1 was non-bargainable. They distinguished it from Notice No. 2, which they argued was non-bargainable because it would retroactively amend action taken pursuant to the Award during its effective period. But there is nothing wrong with retroactive contract proposals and agreements; they are frequently used in industrial relations. Moreover, Notice No. 2 was not to be effective until after the expiration of the Award and thus actually operated *in futuro*.

**C. The District Court Judgments on Prematurity and Non-Bargainability Flout the Plain and Reiterated Policy of Congress To Promote Rather Than Prohibit Collective Bargaining**

**1. The Act Embodies the Decision of Congress That Collective Bargaining Be the Favored Method of Resolving All Labor Disputes in the Railroad Industry**

By its Judgment outlawing collective bargaining upon the subjects and within the time which it defined, the District Court flouted the will of Congress embodied in the purposes and provisions of the Act. "The major objective of the Railway Labor Act \* \* \* was 'the avoidance of industrial strife, by conference between the authorized representatives of employer and employee.'" *Railway Clerks v. Employees Assn.*, 380 U.S. 650, 658, quoting *Virginian R. Co. v. System Federation No. 40*, 300 U.S. 515, 547. "On numerous occasions, this Court has recognized that the Railway Labor Act protects and promotes collective bargaining." *California v. Taylor*, 353 U.S. 553, 559. Manifestly, the District Court frustrated the major objective of the Act, and attacked and defeated rather than protected and promoted collective bargaining, when it invalidated the BLF&E proposals as untimely and non-bargainable.

One of the express "General Purposes" of the Act is "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions." Section 2. The Act in terms requires the parties "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes \* \* \* ." Section 2, First.

Section 6, pursuant to which the BLF&E Notices were served, requires "at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions" and provides for conference on

such proposed changes within thirty days thereafter. This prohibits unilateral changes by either party and requires both parties to discuss any and all proposed changes as promptly as possible. Section 6, and the entire Act for that matter, will be searched in vain for any exceptions of time or subject to the obligation to bargain collectively. There is not the slightest intimation of authority in a party or a District Court to carve out exceptions for particular time periods or subject matters.

Notices Nos. 1 and 2 deal with manning requirements for firemen, Notice No. 1 being addressed to the work for which firemen were required to be employed and Notice No. 2 to reimbursement to firemen who had suffered damages by virtue of the manner in which the railroads had implemented the Award. Precisely this subject of the number of employment opportunities which the railroads are required to maintain for a specific classification was held bargainable by the Supreme Court in *Railroad Telegraphers v. Chicago & North Western R. Co.*, 362 U.S. 330 ("*Telegraphers*" hereinafter). In that case, the railroad was proposing to close certain stations and thus abolish positions in which employees represented by the Telegraphers were employed. When the Telegraphers served a Notice proposing an agreement that no position in effect on a certain date would be abolished except by agreement between the parties, the railroad resisted bargaining on the ground that the subject was one exclusively for management prerogative.

The Supreme Court rejected the railroad's contention of non-bargainability. The Court held:

"in the collective bargaining world today, there is nothing strange about agreements that affect the permanency of employment.

• • •

"It is too late now to argue that employees can have no collective voice to influence railroad to act in a

way that will preserve the interests of the employees as well as the interests of the railroads and the public at large. . . . Here, far from violating the Railway Labor Act, the union's effort to negotiate its controversy with the railroad was in obedience to the Act's command that employees as well as railroads exert every reasonable effort to settle all disputes 'concerning rates of pay, rules, and working conditions.' 45 U.S.C. § 152, First. Moreover, neither the respondent [the railroad] nor anyone else points to any other specific legal command that the union violated here by attempting to bring about a change in its collective bargaining agreement. It would *stretch credulity too far to say that the Railway Labor Act, designed to protect railroad workers, was somehow violated by the union acting precisely in accordance with the Act's purpose to obtain stability and permanence in employment for workers.*" 362 U.S. at 336, 338, 339-340.

The Court below has credited what the Supreme Court held was incredible—that the Act could somehow be violated by a union's seeking stability and permanence in employment for those it represents.

## **2. The Public Law Reiterates Congressional Policy Promoting Rather Than Prohibiting Collective Bargaining**

The Public Law expressly encouraged the parties to reach collective bargaining agreement on the merits of their disputes as well as the extension of the Award. One of the express considerations for enactment recited in the Public Law was that "it is desirable to achieve the above objectives in a manner which preserves and prefers solutions reached through *collective bargaining* . . .," App. A, p. 1a, *infra*. Furthermore, Section 1 provided that no party to the 1959-1960 Notices "shall make any change except by *agreement*, or pursuant to an arbitration award as hereinafter provided . . . ." *Id.* at 2a. In addition,

as we have seen, the parties were able under Section 4 to extend the two-year duration of the Award by agreement. As the parties were thus authorized to bargain and agree during the term of the Award to extend it or to supplant it entirely, they were *a fortiori* authorized to bargain and agree during the term of the Award upon conditions to apply only after it had expired.

The legislative history of the Public Law, discussed pp. 18-26, *supra*, reveals unmistakably the consistent purpose and intention to promote and facilitate agreement by collective bargaining on the permanent solution which would replace the interim Award. One of the principal grounds advanced by proponents of the legislation was precisely that it would be helpful in obtaining permanent settlement by collective bargaining. In addition to the many statements cited in Point I, it is pertinent that Mr. J. E. Wolfe, the railroads' principal spokesman, when asked directly whether he was endorsing the resolution because "at no point in its whole course does it close the door or terminate a continued free collective bargaining between the parties," replied, "That's right, sir \* \* \*." Hearings Before the Senate Committee on Commerce, on S. J. Res. 102, 88th Cong., 1st Sess. 361-362 (1963). Moreover, he pledged to the House Committee, "We will be willing to bargain under any circumstances." Hearings Before the House Committee on Interstate and Foreign Commerce, on H. J. Res. 565, 88th Cong., 1st Sess. 559 (1963).

The decision of the District Court invalidating the BLF&E Notices is precisely contrary to the intention and expressions of Congress in the Public Law and in the Act. This Court should reverse the District Court and require it to conform to the national policy favoring collective bargaining.

## III

**THE DISTRICT COURT LACKED JURISDICTION TO AWARD  
INJUNCTIVE RELIEF AGAINST THE BLF&E BY VIRTUE  
OF THE NORRIS-LAGUARDIA ACT.**

The BLF&E contended below and contends here that the District Court had no jurisdiction to issue an injunction in view of the general provisions and purposes of the Norris-LaGuardia Act (*Telegraphers, supra*) and in particular Section 8 thereof (*Railroad Trainmen v. Toledo, Peoria & W. R. Co.*, 321 U.S. 50). We are confident that the *Telegraphers* and *Trainmen* cases fully support our position in this regard.

We find it unnecessary to burden the Court with discussion of this point. We anticipate that this Court's disposition of Points I and II will effectively declare the rights of the parties. Further, the Norris-LaGuardia issue is presented in substantially similar posture in the other cases which are being heard at the same time as these appeals. The issues discussed herein as Points I and II are in large measure unique to the firemen because the relevant sections of the Award deal solely with the firemen and are not involved in the other cases. Accordingly, we believe we can provide maximum assistance to the Court by discussing Points I and II fully which we regard as unique to the firemen rather than provide repetitive discussion on the Norris-LaGuardia issue.

## IV

**THE MOTION TO DISQUALIFY SHOULD BE GRANTED BUT  
SHOULD NOT INHIBIT DECISION ON THE MERITS BY THIS  
COURT.**

The BLF&E made a Motion to Disqualify in the District Court relying upon Judge Holtzoff's extra-judicial statements to the press that the BLF&E automatically owed certain fines and upon other evidence of bias and prejudice. Judge Holtzoff denied the motion, refusing even to hear

argument thereon. (JA 203.) The BLF&E has included the issue of bias and prejudice on appeal here.

The same issue will be before the Court in the appeals from Judge Holtzoff's ruling finding the BLF&E and its President guilty of contempt, No. 20,316; and they are filing a motion to have the argument on those cases set down immediately after the argument in the cases at bar. If the Court holds in those cases, as we believe it must, that Judge Holtzoff should have disqualified himself for bias and prejudice, then we request that he be barred from any future action in these proceedings. We do *not*, however, ask that any past action be overturned on this ground; to the contrary, we expressly waive any rights we might have as to bias and prejudice concerning past actions in the cases at bar. The legal questions in Points I, II and III of this Brief are ripe for adjudication and it is important to the firemen, the railroads and the public interest that these issues be adjudicated at the earliest possible moment. It is for that reason that we waive our rights for the past as stated above and ask only that, if the Court reverses the contempt adjudication on the ground of bias and prejudice, the Court should exclude Judge Holtzoff from any further action in these proceedings.

### CONCLUSION

It is respectfully submitted that the judgment of the District Court be reversed and that the cause be remanded in accordance with the following principles:

1. Upon the expiration of the Award at 12:01 A.M., March 31, 1966, the National Diesel Agreement of 1950 again became fully effective.
2. The BLF&E Notices of November 15, 1966, were not premature and Notices Nos. 1 and 2 were bargainable.
3. The District Court lacked jurisdiction to award injunctive relief against the BLF&E by virtue of the Norris-LaGuardia Act.



4. District Judge Holtzoff should take no further part in these proceedings.

Respectfully submitted,

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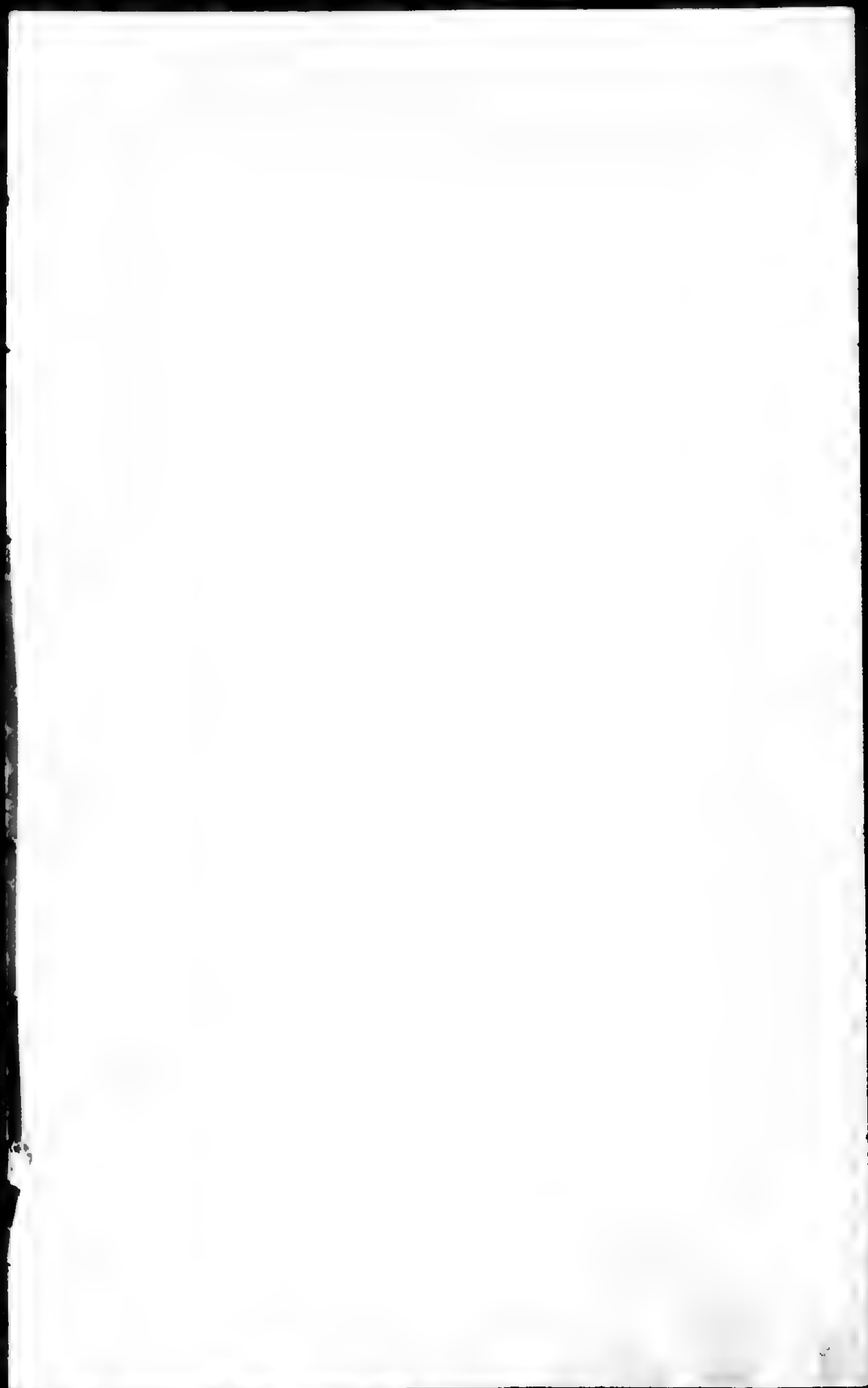
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## **APPENDIX**

**APPENDIX A****Public Law 88-108**

ACT OF AUGUST 28, 1963, 77 STAT. 132, U.S.C., TITLE 45,  
FOLLOWING § 157

Whereas the labor dispute between the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America, labor organizations, threatens essential transportation services of the Nation; and

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute; and

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers; and

Whereas it is desirable to achieve the above objectives in a manner which preserves and prefers solutions reached through collective bargaining; and

Whereas, on August 2, 1963, the Secretary of Labor submitted to the carrier and organization representatives certain suggestions as a basis of negotiation for disposition of the fireman (helper) and crew consist issues in the dispute and thereupon through such negotiations tentative agreement was reached with respect to portions of such suggestions; and

Whereas, on August 16, 1963, the carrier parties to the dispute accepted and the organization parties to the dispute accepted with certain reservations the Secretary of Labor's suggestion that the fireman (helper) and crew

Sec. 3. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consist of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "Minimum Safe Crew Consist" and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

Sec. 4. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act, the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

Sec. 5. The arbitration board shall begin its hearings thirty days after the enactment of this joint resolution or on such earlier date as the parties to the dispute and the board may agree upon and shall make and file its award not later than ninety days after the enactment of this joint resolution: *Provided, however,* That said award shall not become effective until sixty days after the filing of the award.

Sec. 6. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

Sec. 7. (a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

(b) The obligations imposed by this joint resolution, upon suit by the Attorney General, shall be enforceable through such orders as may be necessary by any court of the United States having jurisdiction of any of the parties.

Sec. 8. This joint resolution shall expire one hundred and eighty days after the date of its enactment, except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence.

Sec. 9. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution and the application of such provision to other parties or in other circumstances not held invalid shall not be affected thereby.

Approved August 28, 1963.

**APPENDIX B****Railway Labor Act**

ACT OF MAY 20, 1926, 44 STAT. 577, U.S.C., TITLE 45,  
§§ 151-164

• • •

**Section 2. GENERAL PURPOSES**

(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

**GENERAL DUTIES**

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

• • •

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements

concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

• • •

Section 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

## APPENDIX C

## Norris-LaGuardia Act

ACT OF MARCH 23, 1932, 47 STAT. 70, U.S.C., TITLE 29,  
§§ 101-115

Sec. 1. [*Jurisdiction of Federal Courts to issue Injunctions in Labor Disputes: Limitation.*] No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

\* \* \*

Sec. 8. [*Noncompliance with Obligations Involved in Labor Disputes or Failure to Settle by Negotiation or Arbitration as Preventing Injunctive Relief.*] No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.



REPLY BRIEF FOR BROTHERHOOD OF LOCOMOTIVE  
FIREMEN AND ENGINEMEN

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellant*.

v.

BANGOR AND AROOSTOOK RAILROAD COMPANY,  
ET AL., *Appellees*.

No. 20,192

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellant*.

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Appellees*.

No. 20,193

BANGOR AND AROOSTOOK RAILROAD COMPANY,  
ET AL., *Appellants*.

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellee*.

No. 20,215

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Appellants*.

v.

No. 20,216

**United States Court of Appeals**  
for the District of Columbia Circuit

Appeal from the United States District Court for the  
District of Columbia

**FILED SEP 6 1966**

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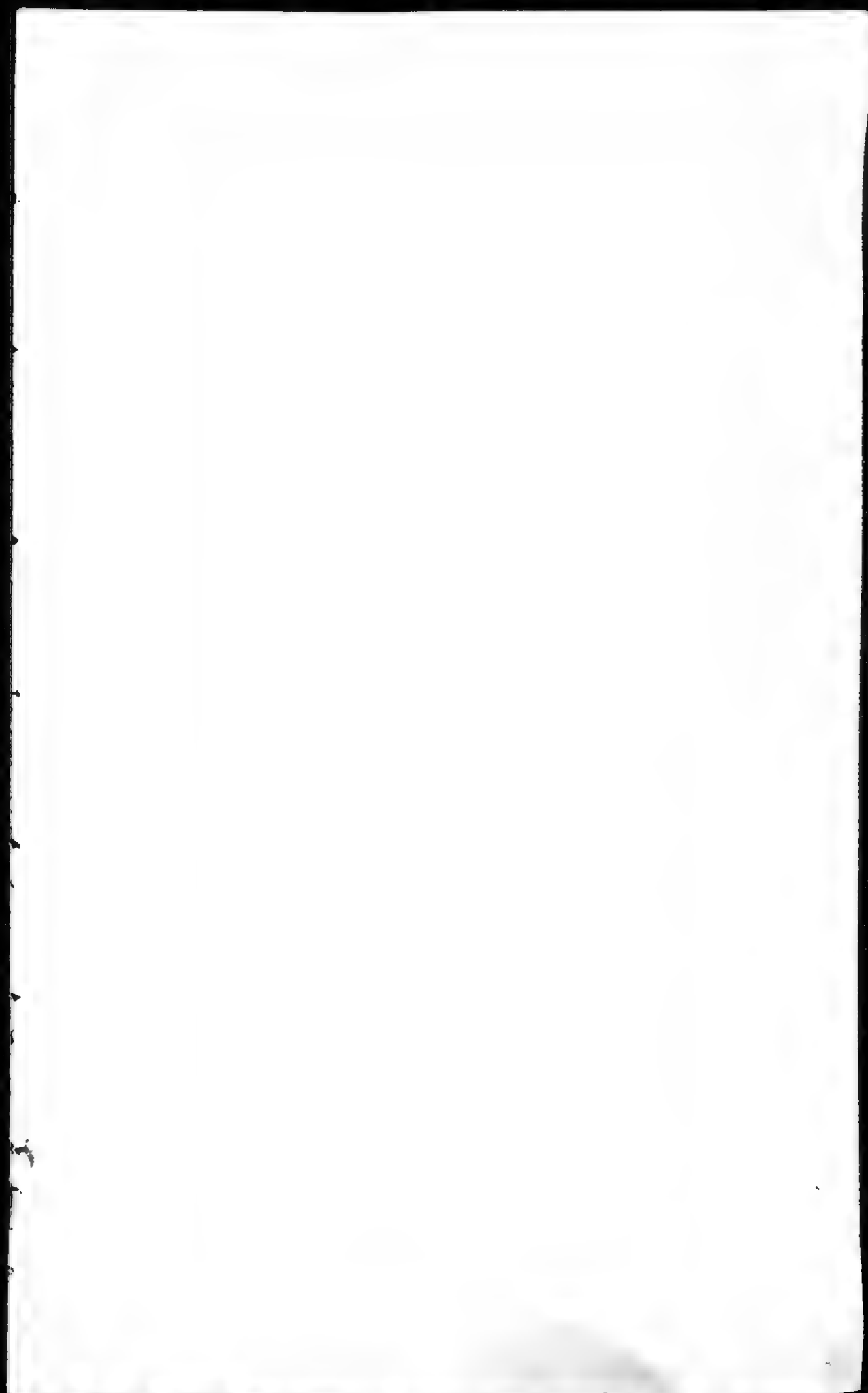
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\* Cases and authorities chiefly relied upon are marked with an asterisk.

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Nos. 20,192, 20,193, 20,215, 20,216

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BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS

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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL.

---

Appeal from the United States District Court for the  
District of Columbia

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Reply Brief for Brotherhood of Locomotive  
Firemen and Engineers

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I

**THE NATIONAL DIESEL AGREEMENT REGAINED ITS FULL  
LEGAL FORCE UPON THE EXPIRATION OF THE AWARD.**

In our initial brief we demonstrated that the text and intention of Public Law 88-108 and the Award thereunder provided only a two-year suspension of the manning requirements of the 1950 National Diesel Agreement, with that Agreement restored to full effect upon the expiration of the Award. The railroads' brief studiously avoids

any reference or mention of this Agreement, but its silence can hardly banish this collective bargain from the case. Nor can its arguments concerning the Public Law and the Award withstand analysis.

(i) The National Diesel Agreement was collectively bargained under the procedures of the Railway Labor Act and thus continues in effect until changed pursuant to an agreement following new Section 6 notices under the Railway Labor Act. On November 2, 1959, such Section 6 notices served by the railroads sought to eliminate the National Diesel Agreement. But Section 1 of the Public Law, which prohibited any change in working conditions "except by agreement, or pursuant to an arbitration award" under the Public Law, clearly suspended those Section 6 notices.<sup>1</sup> This answers the railroads' suggestion that their notices of November 2, 1959, became effective to terminate their obligation under the National Diesel Agreement (Brief 16-17). What terminated was not the obligation of the railroads under the National Diesel Agreement but rather the railroads' notices of November 2, 1959, which were an effort to escape the obligations of the National Diesel Agreement. That Agreement was restored upon the expiration of the Award, and if it is now desired to change it, the railroads' recourse, like that of the BLF&E, lies in their new notices already served (J.A. 137, 186).

(ii) No matter how many times the railroads repeat the phrase that "the modifications in the old rules made by or pursuant to the Award continue to apply after the expiration of the Award", the fact remains that this contention reads the expiration clause of Section 4 of the Public Law right out of the statute. In the face of Congressional language flatly asserting that the Award shall continue in

<sup>1</sup> Moreover, the notices, suspended by the Public Law, were extinguished by the Award thereunder. Section 3 of the Public Law provided that the Arbitration Board should make a decision as to the disposition of the notices and this action should "constitute a complete and final disposition" thereof. The Arbitration Board did just this; it denied the notices "except to the extent hereinafter provided" (J.A. 107) for its two-year duration (J.A. 121).

force "not to exceed two years from the date the award takes effect";<sup>2</sup> the railroads argue that the Award continues beyond that period and until changed under the Railway Labor Act. And despite the fact that the Public Law pronounces that "it is desirable to achieve the . . . objectives in a manner which preserves and prefers solutions reached through collective bargaining", the railroads' arguments boil down to the contention that the only effect of the two-year limitation period is to prevent mandatory collective bargaining during that period and to restore it at the end of the period. To attribute to the words "the Award shall continue in force . . . not to exceed two years" the meaning that the Award continues beyond two years but mandatory collective bargaining is suspended for two years is to turn plain language upside down. Had Congress meant what the railroads now contend—that the Award was permanent and only mandatory collective bargaining was suspended—it was not so bereft of draftsmen as to have been unable to say so.

(iii) As concerns the Award itself, the railroads rely exclusively upon Section II-A which provided that "all agreements, rules, regulations, interpretation, and practices, however, established, shall continue undisturbed except as modified by the terms of the Award"—a savings clause inserted at the insistence of BLF&E President Gilbert over the objection of the railroads. By a remarkable sleight of hand, *this savings clause intended to secure the unaltered validity of unaffected manning rules during the Award becomes a stricture that the previous manning rules remain modified after the life of the Award.* We cannot conceive how this manning-rules savings clause can be twisted into a Board intention to project its suspension

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<sup>2</sup> The railroads argue that this language "merely poses the issue of what rules are to apply after the expiration" of the Award (Brief 15) (Emphasis added throughout this Brief). But, whether or not this language of the Public Law poses the issue of what rules apply after expiration, the one thing the language makes perfectly clear is that *the Award does not apply after expiration.* And, except for the Award itself, the railroads have never suggested any alternative to the National Diesel Agreement as the source of applicable manning rules after March 31, 1966.

of certain manning requirements past the life of its Award. All the savings clause stated and intended was that pre-existing manning rules continued in effect and were unaffected by the Award even *during its life* except to the extent that specific suspensions or modifications were being authorized by the Board. That is the plain meaning of the Board's specific two-year time limitation on the life of its own Award (J.A. 121).

The opinion of the neutral members likewise demonstrates that they did not believe they were making rules which would go on after the two-year period: "The Board's award will remain in force only two years. Within that time the effect of attrition may be such that the number of firemen . . . actually eliminated may be comparatively small. Problems that are as deeply rooted and that have been as long in development as those here involved, however, cannot be solved overnight . . . If, through this award, principles are established and procedures set in motion which contribute to a final solution, our hopes as neutral members of this Board will have been fulfilled." *Opinion of the Neutral Members*, 41 LA 680, 681 (1963). An Arbitration Board speaking of its Award as establishing principles which may eventually contribute to a final solution can hardly be deemed to have intended to decree the final solution itself through a self-perpetuating Award.

In like fashion, the Chairman of the Arbitration Board, Mr. Ralph Seward, made this limited duration of the Award perfectly clear when he testified before the Senate Commerce Committee last year:

"SENATOR PASTORE. But the fact of the matter is, that there would be an elimination, as a practical and realistic conclusion, 90 percent of the slots?

"MR. SEWARD: If there were time enough, that would result, yes . . . .

"SENATOR PASTORE: What do you mean by, "If there were time enough"?



"MR. SEWARD: Just that in 2 years, which our award only runs for 2 years, this procedure, the processes of attrition, could not operate enough to take—to allow the elimination of that number of jobs." (Hearings Before the Senate Committee on Commerce, on The Administration of Public Law 88-108, 89th Cong., 1st Sess. 359 (1965).

(iv) Nor is there anything in the Public Law or in the Award which supports the contention of the railroads (Brief 18, 25-27) that the Award, which resulted from compulsory arbitration, "become part of the 'agreements' between the parties . . ." The inclusion in the Public Law of the reference to Sections 7, 8 and 9 of the Railway Labor Act was simply a short-cut way of setting up procedures to guide the Arbitration Board. And precisely because a compulsory Award is the antithesis of an "agreement between the parties", the railroads' reliance upon the *Manning* case is misplaced. *Manning* did not involve an arbitral Award but a negotiated contract and the railroads point to no authority whatever for their contention that a compulsorily-arbitrated Award of limited duration continues in force after its life in the form of a permanent contract modification.<sup>3</sup> Of course, the entire argument evades the central question of what Congress could have intended by limiting the life of the Award to two years, if that Award nevertheless could somehow continue in effect after the two-year period in the form of a permanent contract modification.

(v) Apart from the fallacious arguments based on the Public Law and the Award, the railroads advance the subsidiary contention (Brief 14) that the BLF&E is asserting a double standard under which only the railroads'

<sup>3</sup> Indeed, Congress itself sharply distinguished between even voluntary arbitral awards and collectively-bargained agreements. Thus, Section 8(j) of the Railway Labor Act provides that voluntary agreements to arbitrate "shall fix the period during which the Award shall continue in force." Clearly, if Congress permitted the parties themselves to fix a termination date in a voluntary arbitration, Congress intended that the expiration date which it expressly prescribed in the Public Law should be given full force.

rights were wiped out upon expiration of the Award. But this contention rests on a confusion between general manning rules and the status of particular workers—i.e., between jobs and men. The BLF&E has urged from the first that *all* manning-rule suspensions under the Award ceased upon its expiration. This is entirely consistent with the view, also urged by the BLF&E, that firemen retired or otherwise removed during the Award remain in whatever status they were upon its expiration. To recognize that a fireman discharged, transferred, or retired during the Award is now no longer a fireman, in no way impairs the full return to effectiveness of the pre-Award working rules to govern post-Award manning requirements and the remaining firemen's rights. Nor is there any double standard implicit here. In exchange for the "right" of certain firemen to retire, transfer, or be discharged with severance pay during the Award, the railroads were given the right during the same period to operate certain trains without firemen. Nowhere in the railroads' brief do they mention the stipulated fact that for a \$36,000,000 outlay during the Award to cover costs or retirements, transfers, and separations they saved \$179,000,000 in firemen's pay (J.A. 132). Under these circumstances, it comes with poor grace from the railroads to suggest that the firemen gained some advantage when the railroads exercised their option to discharge, transfer, or retire them, at a net profit to the railroads of 400 percent.

But, irrespective of the railroads having been the principal beneficiary of the interim Award, the controlling point is that the statutory life of the Award has expired and the railroads have suggested no valid argument under the Public Law or the Award by which what has expired may yet have continuing life. As we next show, there is equal lack of merit in the railroads' argument that an "absurd" result flows if Congress is deemed to have prescribed revival of pre-Award manning requirements upon expiration of the interim arbitral period.

## II

**IT IS NOT THE BLF&E'S STATUTORY CONSTRUCTION BUT THE RAILROADS' REFUSAL TO BARGAIN WHICH HAS FRUSTRATED CONGRESSIONAL HOPE FOR RESOLUTION OF THE MANNING DISPUTE DURING THE AWARD PERIOD.**

The railroads contend (Brief 28-31) that the revival of pre-Award manning requirements upon expiration of the Award is an "absurd" result which Congress could not have intended. They thus echo the District Court's comment that it could not have been intended "that the steps taken during the effective period of the Award should become a nullity at the end of the two-year period" (J.A. 223). If a "nullity" has in fact occurred, it does not derive—as the railroads would have it—from the revival of contractual manning requirements upon expiration of the Award; rather it flows from the railroads' own adamant refusal to bargain with the BLF&E about the manning requirements which would apply after the Award expired. Had the railroads bargained, as the Congress hoped and expected, the prospects for long-run resolution of the manning dispute were favorable, because the BLF&E in its bargaining Notice No. 1 for post-Award manning rules had acquiesced in a major reduction of manning obligations under the National Diesel Agreement (J.A. 144).

In enacting the Public Law for interim arbitration, Congress pinned its hopes for ultimate resolution of the manning dispute not upon a final arbitral Award but upon interim arbitral intervention to be supplanted by hoped-for collective bargaining resolution of the matter. That emphasis is found in the preamble recitation that it is desirable to achieve the stated objectives of the Public Law "*in a manner which preserves and prefers solutions reached through collective bargaining,*" and is emphasized also throughout the legislative history (BLF&E Brief 18-26; 43).<sup>4</sup> The precipitating message by President Ken-

<sup>4</sup> The railroads' effort to denigrate the legislative history (Brief 19-22) as referring to a bill "rejected by the Congress" is fully answered by *Engineers v. Chicago, E.I. & P. R. Co.*, 382 U.S. 423 (pp. 14-15, *infra*) (*Engineers* hereinafter).

nedy urged a Congressional enactment which would encourage "the parties to achieve their own solutions through collective bargaining" and provide "for an interim remedy while awaiting the results of further bargaining by the parties." Senator Morse underlined that intent of the two-year arbitration proposal finally adopted, noting that it "would encourage and stimulate the parties to continue to bargain in order to develop final solutions . . . ." Secretary Wirtz made the same point in his Senate testimony, when in response to Senator Pastore's question about the temporary nature of the arbitration he said, "I would assume, Mr. Chairman, in complete good faith within that two-year period the parties would have worked out the resolution of this matter." To the same effect was testimony of Chairman Wolfe of the National Railway Labor Conference, that during the two-year period "the parties themselves, as they eventually will have to do some time or another, will finally dispose of these . . . disputes by collective bargaining." Indeed, Mr. Wolfe *promised* the House Commerce Committee that "we will be willing to bargain under any circumstances." And the Supreme Court underlined this clear Congressional intention when it recently noted that the President had recommended legislation "for an interim remedy while awaiting the results of further bargaining by the parties" (*Engineers* case, 382 U.S. at 431).<sup>5</sup>

Thus, Congress did not intend any absurd or futile result from its Public Law authorizing interim two-year arbitration, for it properly hoped that during that period the parties could come to a voluntary agreement about the manning issue and the manning requirements to apply upon expiration of the Award. Undoubtedly, Congress believed that the experience under an Award requiring both sides to recede from their ultimate positions for the two-year

<sup>5</sup> It is worth recalling, too, that in October 1965, after seventeen days of hearings upon the administration of the Award, the Senate Committee on Commerce passed a Resolution calling upon the parties to engage in further collective bargaining (J.A. 142).

period would facilitate collective bargaining during that period towards a permanent solution.

Such a Congressional anticipation was honored by the BLF&E but frustrated by the railroads. In the BLF&E's Notice No. 1, many months before expiration of the Award, it offered to bargain with the railroads upon a modified manning provision requiring some 6,000 fewer firemen than under the National Diesel Agreement.<sup>6</sup> Far from any absurd result, if the railroads had in good faith met and negotiated about manning requirements at the expiration of the Award—as Congress had hoped and intended—there would have been achieved for the first time a negotiated reduction in firemen manning requirements. The railroads, however, adamantly refused to bargain about manning requirements applicable upon expiration of the Award (J.A. 164-166). For this frustration of the Congressional intention—accomplished in the face of the railroads' own *promise* of bargaining made to the Congress by their witness Wolfe—the railroads have never given an explanation. While they now argue the invalidity of BLF&E's Notice No. 1 on technical grounds,<sup>7</sup> the railroads frankly concede that during the Award period they were free to

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<sup>6</sup> It is notable that the 6000-man reduction offered by the BLF&E as its initial bargaining position was approximately the same number of reductions which the Chairman of the Arbitration Board testified the Board had anticipated under its Award. *Hearings Before the Senate Committee on Commerce on the Administration of Public Law 88-108*, 89th Cong., 1st Sess., 364 (1965). It should be noted, too, that while the railroads challenge the BLF&E assertion that Notice No. 1 would have reduced firemen by a figure of some 6000 (Brief 35, n. 17), the railroads nowhere give any basis for their challenge. In fact, Notice No. 1 follows the category approach proposed by the Secretary of Labor in his August 2 memorandum to the parties, where 5500 positions are specifically referred to. *Hearings, supra*, 432.

<sup>7</sup> The railroads contend in their Brief that Notice No. 1 was both premature and non-bargainable (Brief 35-45). But they give no reason why it was premature to bargain for a result to go into effect at the expiration of the Award. And their argument with respect to the non-bargainability of Notice No. 1 is largely based on precedents overruled or weakened by *Telegraphers v. Chicago N.W. R. Co.*, 362 U.S. 330 (1960). Furthermore, the argument of non-bargainability of Notice No. 1 comes with ill grace since the railroads never suggested to the District Court that this notice was non-bargainable. Only when Judge Holtzoff, under the mistaken impression that the railroads were making this argument and that the issue had been submitted to him

negotiate and agree upon manning requirements to apply upon expiration of the Award (Brief 39).

The railroads' refusal to bargain is now explained by their subsequent conduct. Instead of negotiating for a solution, they staked their hopes upon just such a judicial continuation of the Award as the District Court has given them. Having first frustrated the Congressional hope for a negotiated adjustment between the parties by refusing to bargain, the railroads now urge that the two-year arbitration would become a nullity when the Award expired if pre-existing manning rules became restored to full effect. The railroads' plea is a bootstrap argument: since they have refused to bargain about the manning issue and Congressional hopes for an amicable adjustment have thus come to naught, the courts should now give continuing life to what Congress legislated as only an interim arbitral Award.

We respectfully submit that what is not absurd is giving effect to the explicit statutory expiration requirement; what is absurd is the railroads' argument that courts should extend the statutory life of an arbitral Award at

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under the stipulation (which it was not, J.A. 139), did the railroads suddenly find this issue non-bargainable.

Two other railroad errors call for brief answers: (i) The railroads argue that Notice No. 2 is invalid and, since the notices were "composite", Notice No. 2 infects Notice No. 1 (Brief 41-42). But, as pointed out in our initial brief (p. 39), there is nothing invalid about Notice No. 2, and furthermore, Judge Holtzoff ruled that the notices were "separate proposals", not composite (J.A. 210). (ii) The railroads also argue (Brief 45) that the BLF&E is wrong in contending that Judge Holtzoff proscribed "any proposal by the BLF&E for manning conditions more favorable to firemen than those dictated by the Award . . . ." They now argue that "Judge Holtzoff did not purport to rule upon the validity of bargainability of other proposals . . . ." This statement, however, conflicts with the admission of counsel for the railroads before this Court when the BLF&E moved to expedite argument of this case. Indeed, this Court, in its Memorandum and Order of June 15, 1966, expressly referred to the fact that the railroads' "counsel argued that appellant was not necessarily prohibited from serving new notices, but admitted that in view of the opinion of the District Court, there would be substantial problems to be threshed out in evolving any such notices." Bluntly put, what Judge Holtzoff has done is to continue the Award with no reasonable way of achieving any bargaining change.



the request of railroads who first frustrated the Congressional hope for a bargained solution and now would build a case for a judicial extension of arbitration upon their own frustration of the Congressional intent. Moreover, as we shall see in Point III, the Supreme Court has already answered the railroads' Award-extension argument in the negative.

### III.

#### THE ENGINEERS DECISION OF THE SUPREME COURT DISPOSED OF THE ARGUMENTS THE RAILROADS REMAKE HERE

In *Engineers v. Chicago, Rock Island & P. R. Co.*, 382 U.S. 423, the Supreme Court earlier this year held that the Public Law did not pre-empt the Arkansas full crew law. Since in that case all concerned agreed that it would be senseless for Congress to have pre-empted state laws for only a two-year period, the briefs and argument centered on the duration of the Award and the consequences upon its termination. As we show hereafter, the Supreme Court was wholly unpersuaded by and ruled against the very arguments the railroads remake here.

In their Brief in this Court the railroads belittle the importance of *Engineers*:

"The reliance by the BLF&E . . . upon *Engineers v. Chicago R.I. & P. Co.*, 382 U.S. 423 (1966), and *Railway Clerks v. Florida E.C.R. Co.*, 384 U.S. 238 (1966) can be disposed of in a footnote. In neither case did the Supreme Court discuss or purport to decide the issue as to the rules to be applied after the expiration of the Award. Insofar as P.L. 88-108 and the Award are concerned, the *Engineers* case held only that they did not pre-empt state laws governing the manning of trains . . . ." (Brief 22, n. 10)

This effort to brush off *Engineers* in a footnote belies the railroads' protestations to the Supreme Court in that

case. Thus, the National Railway Labor Conference<sup>8</sup> represented in their *Amicus* Brief in *Engineers* that the issues there were of paramount importance to its members entirely apart from the question of pre-emption, because:

"The carriers represented by the Conference, wherever they operate and whatever this Court's decision as to the validity of state minimum crew legislation, may be directly affected by any statements that the Court may make concerning the work rules that will govern the manning of trains upon the expiration of the two-year period during which the Arbitration Award 'shall continue in force.' (P.L. 88-108, § 4.) Certain arguments advanced by appellant [unions] appear to be based upon the erroneous premise that when the Award 'expires' the work rules in effect prior to the Award will be revived, thereby requiring the carriers to hire thousands of men to fill positions eliminated under the Award" (*Amicus* Brief, p. 4).

The main thrust of the *Amicus* Brief was aimed at "the significance to be given the duration of the Award in states *not* having minimum crew laws . . . [because] the manner in which the Court treats the issue may be of paramount importance to the members of the *amicus* entirely apart from the outcome of this particular litigation." *Id.* at 4-5. But the Supreme Court in *Engineers* decided this issue of "paramount importance" against the position of the railroads, repeatedly emphasizing that the Award was an interim remedy of limited temporary duration. In so doing, it rejected the major arguments repeated by the railroads here.

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<sup>8</sup> The National Railway Labor Conference is a conference of railroads whose members account for 92% of the total railroad mileage in the United States. Its counsel who prepared the Supreme Court *Amicus* Brief in *Engineers* also represents the railroads in this instant appeal. The appellees in *Engineers* were the Chicago, Rock Island and P. R. Co. and a group of other railroad doing business in Arkansas.



**A. The Railroads' Contention That the Award Continues Beyond Its Two-Year Statutory Term Was Made to and Rejected by the Supreme Court in *Engineers*.**

In the instant appeal, the railroads argue that the Award does not terminate at the date specified by Congress:

"The Congress integrated the arbitration under P. L. 88-108 into the Railway Labor Act so that the rules and procedures established by the Award would continue to apply after the expiration of the Award until changed in accordance with that Act" (Brief 22).

In *Engineers*, the Unions argued against "pre-emption", saying that it made no sense to pre-empt a state law for a two-year period and that "The contention that Public Law 88-108 preempts permanently is directly contrary to its language and without foundation" (Reply Brief, pp. 1-5). The appellee railroads joined issue on this point, arguing that:

"Congress cannot possibly have intended only a temporary supersession of the Arkansas laws . . . . Thus, when Congress directed the Board to make a 'complete and final disposition' (P.L. 88-108, § 3) of the fireman and crew consist issues, it knowingly authorized a long-range solution, not one which could be cast aside two years later by reactivation of the full crew laws of a number of states" (Railroads' Brief, pp. 57-59).

The *Amicus* Brief was even stronger and devoted substantial argument to the proposition that:

"The rules established by the Award will continue to govern the manning of trains, after the expiration of the two year period during which the Award is in force, until those rules are changed in the manner prescribed by the Railway Labor Act" (*Amicus* Brief, p. 38, discussion at pp. 38-53).

The *Amicus* elaborated with the comment that:

"The Congress did not intend that the railroads should pay millions of dollars in separation allowances in order to eliminate positions declared to be unneeded,

only to be required after a few months to hire enough men to fill the very same positions" (*Amicus Brief*, p. 20).

It is apparent from the above that the issues raised here, the arguments made here, and even the language used here, were previously addressed to the Supreme Court by the same railroads in the *Engineers* case. The Supreme Court met these arguments head-on. It adverted to the railroad contention that the Award continues beyond the two-year period. It said: "the railroads now contend [P.L. 88-108] was intended to permanently supersede" the Arkansas laws (382 U.S. at 430). The Court then rejected this contention, concluding that "Congress wanted to do as little as possible in solving the dispute which was before it" and intended that the Award was to be a disposition of these issues "for a period not exceeding two years" (382 U.S. at 433). Upon this view of the Congressional intention, the Court found that Congress did not intend to supersede the state full crew laws.

Thus, the issue of whether or not the Award was to continue beyond the two-year statutory term was before the Court, was fully briefed and argued, and resolved against the railroads.

**B. The Railroads' Contention That the Legislative History Relied Upon by BLF&E Is Irrelevant Was Made to and Rejected by the Supreme Court in *Engineers*.**

In the instant appeal, the BLF&E supplements the language of the Public Law with its legislative history (Brief 18-26) to demonstrate that Congress intended a limited two-year Award period. The railroads in the instant appeal avoid coming to grips with this legislative history because it:

"related to a bill proposed by the Administration which was rejected by the Congress" (Brief 19).

In *Engineers*, the Unions relied upon the same legislative history to prove the same point: that Congress limited

the duration of the Award. The railroads in *Engineers* made the same point about the legislative history that they repeat here: that it is irrelevant because:

“the bill eventually enacted was the bill adopted by the Senate rather than the House Committee’s version” (*Amicus Brief*, p. 18).

In *Engineers*, the Supreme Court rejected the railroad contention that the disputed legislative history was irrelevant. To the contrary, the Supreme Court expressly relied upon the Message of President Kennedy, the testimony of Secretary Wirtz explaining the Administration proposal, and other parts of the legislative history which the BLF&E relies upon and which the railroads seek to have this Court disregard.

### C. The Railroads’ Economic Arguments Were Made to and Rejected by the Supreme Court in *Engineers*.

In the instant appeal, the railroads advance economic contentions and state that:

“The fundamental issue before the Court is whether the carriers once again are to be saddled with obsolete and inefficient work rules which resulted in over-manning that has been condemned by every governmental body which has considered the matter . . .” (Brief 13).<sup>9</sup>

<sup>9</sup> Of course, the fundamental issue is no such thing; it is the intention of Congress in enacting the Public Law. But the BLF&E cannot let these assertions go unchallenged, although it believes that this Court is not the appropriate forum to decide these far-reaching issues of economics, railroad technology, and sociology.

The disputed issue between the railroads and the BLF&E concerns the manning of diesel engines in freight and yard service. The railroads raise no issue about the necessity for a fireman on passenger trains, but contend that a fireman is no longer necessary in freight and yard service. The BLF&E urges, to the contrary, that firemen are necessary even on diesel engines for a number of safety reasons. On the road, they serve as a lookout on the “left side” of the engine; and on the normal train with three or more engines, this “look-out” service cannot be performed by the head brakeman who frequently rides in the rear engine and whose primary function is to keep an eye to the rear for “hot boxes”, “flat tires”, loose couplings, and the like, and who is away from the engine during switching operations for substantial periods of time. In yard service, there is no one except the fireman to serve as a lookout at the numerous crossings, congested “switching points”, etc., when the switching crews may be several intersections away. Moreover, the firemen

In *Engineers*, the railroads made similar economic contentions in support of their pre-emption argument, both the appellee railroads which contended that:

"The unvarnished fact of the matter is that the 'crew consist' laws are laws guaranteeing a specified arbitrary number of jobs on each operating train . . . ." (Railroads' Motion To Affirm, p. 15),

and the *Amicus* railroads which posed the issue as follows:

"At the heart of the legal issues raised in this case is a public policy question of large consequence: whether the effectiveness of a Congressionally sanctioned resolution of labor problems produced by automation can be limited by inconsistent state laws. The railroads and their employees share with other American industries both the anxieties and the hopes generated by modern labor-saving technology. In the case of the railroad industry, the need for securing the benefits of that technology is particularly urgent . . . ." (*Amicus* Brief, p. 21).

In *Engineers*, the Supreme Court refused to enter this economic thicket. It adverted to the "problem of manning trains" as "sensitive and touchy" and as presenting "an issue of constant dispute between the railroads and the unions" (382 U.S. at 429-430). It sketched the opposing economic and safety contentions of the disputants and referred to the report of the Eisenhower Presidential Commission: "unsatisfactory to the brotherhoods, not wholly

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relieve the engineer on the long, tedious stretches of road service and maintain a constant vigil over the complicated engine, making minor repairs and adjustments when required while the engineer continues the train in progress. Without the fireman, the engineer would have three alternatives, equally dangerous: ignore the defect, repair while in motion, or stop the train to make the repair. During the effective period of the Award, there was, according to the Interstate Commerce Commission, an "alarming" increase in accidents. Hearings, *supra*, 297.

The neutral members of Arbitration Board 282 examined the opposing contentions and concluded that "The record contains no evidence to support the charge, frequently and irresponsibly made, that firemen presently employed in road freight and yard service throughout the country are being paid to do nothing and actually perform no useful work." 41 LA at 687. They made a finding to the contrary: "We think it clear", said the opinion, "that firemen are presently performing useful services." 41 LA at 688.

satisfactory to the railroads" (*id.* at 431). The Supreme Court then concluded that Congress, in accordance with the Message of President Kennedy, refused to "pass a law which would finally and completely dispose of the problem"; to the contrary, Congress in "hope that the dispute could eventually be settled by collective bargaining" referred the manning issues "to which both parties cannot agree" to an impartial body "for an interim remedy while awaiting the results of further bargaining by the parties" (*id.* at 431-432). The railroads' arguments here have a hollow ring after their rejection in *Engineers*.

#### IV.

#### THE DISTRICT COURT'S POSITION IS NOT ONLY UNREASONABLE BUT UNWORKABLE.

We have seen in the foregoing sections of this Reply that the railroads' position that the Award continues in effect after the two-year statutory period is wholly unreasonable. The railroads are arrogantly asking this Court to wipe out of the statute the very time limitations on the Award that Congress so explicitly wrote into it with the railroads' blessing (BLF&E Brief 26). Defying both the Congressional mandate to bargain and the Supreme Court's rejection in *Engineers* of the arguments they now remake, the railroads ask this Court to give them the permanent Award Congress so clearly repudiated. But, as unreasonable as is the railroads' contentions here, the District Court's position is even more unreasonable, and unworkable to boot.

In our initial brief, we pointed out that the District Court's opinion defies rational analysis in that the Court ruled that the Award "has expired", but remains in effect (BLF&E Brief 35). The decree in this case, we pointed out, becomes both the collective bargaining agreement and the Award; the District Court arrogates to itself the position of Labor Relations Czar in a myriad of situations. In effect, the District Court has established a form of judicial

trusteeship for implementation of existing and future rights arising neither from the National Diesel Agreement nor the Award, but rather from its own usurpation of authority.

The unworkability of the opinion and judgment below has been further demonstrated since the filing of our initial brief in July. For, although the District Judge held that firemen who remained on the railroads as of March 31, 1966, could not be terminated, there were no guidelines laid down as to what jobs such firemen were entitled to hold. The BLF&E, relying upon the District Court's repeated assertions that "neither side may take any further affirmative steps under the Award", advised the Chairman on the various railroads "that the railroads could not take any affirmative steps or actions that would in any way worsen the status or working conditions of the firemen as compared with their status and working conditions as of 12:01 a.m., on March 31" and "that all seniority rights . . . remained in effect" (see Appendix, pp. 3-4, *infra*). But the railroads took the position that all they had to do under the District Court judgment was to give the firemen some form of engine service and that it did not matter whether the job was at some remote post or at lower wages or with more difficult working conditions.

When the railroads implemented their position by continuing to abolish firemen jobs after March 31 and thus forcing firemen from job to job, the BLF&E, on August 5, sought a temporary restraining order from the District Court. The matter was finally brought on for hearing before Judge Holtzoff on August 19. The BLF&E argued that, under Judge Holtzoff's ruling, no further affirmative steps could be taken under the Award, and the railroads could therefore no longer abolish firemen jobs upon particular runs as they had under the Award and thus force firemen into less desirable runs. One affidavit filed in support of the motion for a temporary restraining order by J. L. Shattuck, Vice President of the BLF&E in charge of these

matters, is set forth in the Appendix and lists sixteen different situations in which firemen's jobs have been worsened and their seniority denied (see Appendix, pp. 4-5, *infra*). The railroads opposed the temporary restraining order, arguing that the Award continues and that they can abolish any job so long as the firemen remaining in service on March 31 have some form of engine service.

On August 19, 1966, the District Court denied the motion for a temporary restraining order with certain comments which underline the unworkability of the present judicial trusteeship. Judge Holtzoff indicated, with railroad counsel approval, that Arbitration Board 282 could still reconvene and issue interpretations even though the Award had expired (Tr. 13-14, 26-27). The Court went on to point out that, although the railroads "couldn't take any affirmative acts under the Award", he did not consider forcing firemen into different jobs to be "acts under the Award" (Tr. 38-39), but he failed to say where the power to abolish further jobs came from if it was not from the Award (Tr. 39). The Court did say that the firemen "are entitled to the same kind of job" (Tr. 49), but could be moved around to different jobs "within reason" (Tr. 56). Although indicating that he would have granted a temporary restraining order if a fireman had been forced to move his family to a new location, he denied the temporary restraining order even as to firemen who had been forced by railroad action since March 31 to work 105 miles away from home five days a week, only returning to their homes on the two off days (Tr. 57).

The BLF&E's motion for preliminary injunction to restrain the railroads from continuing to abolish jobs and thus force firemen into less desirable runs is set for hearing shortly after the due date of this brief. Judge Holtzoff has already announced that he will lay down broad principles as guidelines for the railroads in moving firemen from the jobs they held on March 31 into other less desirable jobs, but will leave the "individual claims of



individual employees" to some other body (presumably the Arbitration Board or the National Railroad Adjustment Boards, or local courts) (Tr. Aug. 29 4-6).<sup>10</sup> But, whatever guidelines the Court elaborates, without either the National Diesel Agreement or the expired Award to define firemen job rights, the situation for the workers will be intolerable. No fireman will know from one day to the next what job he has; seniority will be meaningless and a life-time of service can only end in turmoil (Appendix, p. 6, *infra*).

The National Diesel Agreement was simple of enforcement; every run with minor named exceptions was manned by a fireman and seniority determined what individual went on what job. The Award set up different rules for a temporary period and had an Arbitration Board to umpire these rules; the umpire is gone with the expiration of the Public Law. Now, unless the National Diesel Agreement is in effect, there are no rules to govern railroad firemen relations except the hopelessly unworkable fabrication of the District Court. What started in Congress as an interim arbitration has ended up as a permanent judicial administration with historic bargaining agreements buried. A result so far removed from Congressional intent cannot stand.

### CONCLUSION

We have demonstrated both in our initial brief and in this reply that the railroads' position is a total rewrite of Congressional language and purpose. We have

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<sup>10</sup> Judge Holtzoff's pronouncement that he will leave the "individual claims of individual employees" to one of these tribunals is the final demonstration of the unworkability of his decree. The Arbitration Board is defunct. There is nothing in the Railway Labor Act giving the National Railroad Adjustment Boards jurisdiction to hear claims arising out of a compulsory arbitration award or to implement a judicial decree; indeed, their jurisdiction is limited to "the interpretation or application of agreements". Section 3(i) of the Railway Labor Act. And the implication that local courts might be used would be unfair to the individual employees, would clog court calendars and would be both unwise and unworkable for the reasons that led Congress to establish Adjustment Boards rather than leave these matters to litigation. It is ironic that the implication that firemen's claims might be heard in local courts now comes from the Judge before whom all of this litigation has been heard and to whom the original BLF&E suit in Chicago was transferred.



shown, too, that the District Judge's position continuing the attrition of firemen jobs (BLF&E Brief 34, n.) is unreasonable and unworkable. We submit, therefore, that, consistent with Congressional language and intent, the National Diesel Agreement went back into full force and effect on March 31 and this Court should so rule.

Nevertheless, as lawyers obligated to present the full range of possible alternatives to this Court, we note here a pragmatic alternative in addition to the positions of the BLF&E, the railroads and the District Judge. This alternative was presented to the District Court at the argument on the merits (Tr. May 4 72-73). It is this: That the National Diesel Agreement went back into effect on March 31, 1966, except as to jobs from which firemen had actually been removed during the period of the Award. In other words, in addition to manning exceptions made by the National Diesel Agreement itself, those jobs vacated by firemen during the period of the Award would be added to those exceptions and free of manning requirements. Only those jobs manned by firemen as of March 31, 1966, and new runs created thereafter, would be included under the National Diesel Agreement; all firemen would be entitled to bid for all the jobs in accordance with existing seniority rules (J.A. 129).

We do *not* urge this result upon the Court, as we continue to believe Congress intended the National Diesel Agreement to cover all jobs upon the expiration of the Award except as bargained between the parties. But we do submit that if this Court for some reason should reject our basic position, this alternative is less irrational than that of the railroads and of the District Court.

This alternative avoids the railroads' effort to ride rough-shod over the Public Law, the Award, the legislative history, and the *Engineers* case, and to make permanent an Award which expressly expired on March 31, 1966; under this alternative the Award did clearly expire on

March 31. It avoids the unworkability of the District Court's position; the National Diesel Agreement will apply to specific jobs—those manned on March 31, 1966 and all new runs—and traditional seniority rules will determine the job of each man.

What this alternative does is to leave intact the job attrition actually completed during the Award and to prevent any further attrition beyond the express term of the Award. This alternative requires no hiring or rehiring of anyone to fill firemen jobs vacated during the Award; new firemen would only be hired or rehired as replacements are needed or for railroad expansion. This alternative provides a base from which both parties can bargain as to manning for the future.

In sum, we continue to believe and urge that the clear Congressional limitation upon the life of the interim arbitral Award leaves no room for a judicially-created compromise seeking an ultimate solution of the underlying problem. But if our position were rejected and this Court were itself to seek out a compromise, this is the only rational answer it can give.

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It is respectfully submitted that the judgment of the District Court be reversed and that the cause be remanded in accordance with the following principles:

1. Upon the expiration of the Award at 12:01 a.m., March 31, 1966, the National Diesel Agreement of 1950 again become fully effective.
2. The BLF&E Notices of November 15, 1966, were not premature and Notices Nos. 1 and 2 were bargainable.
3. The District Court lacked jurisdiction to award injunctive relief against the BLF&E by virtue of the Norris-LaGuardia Act.

4. District Judge Holtzoff should take no further part in these proceedings.

Respectfully submitted,

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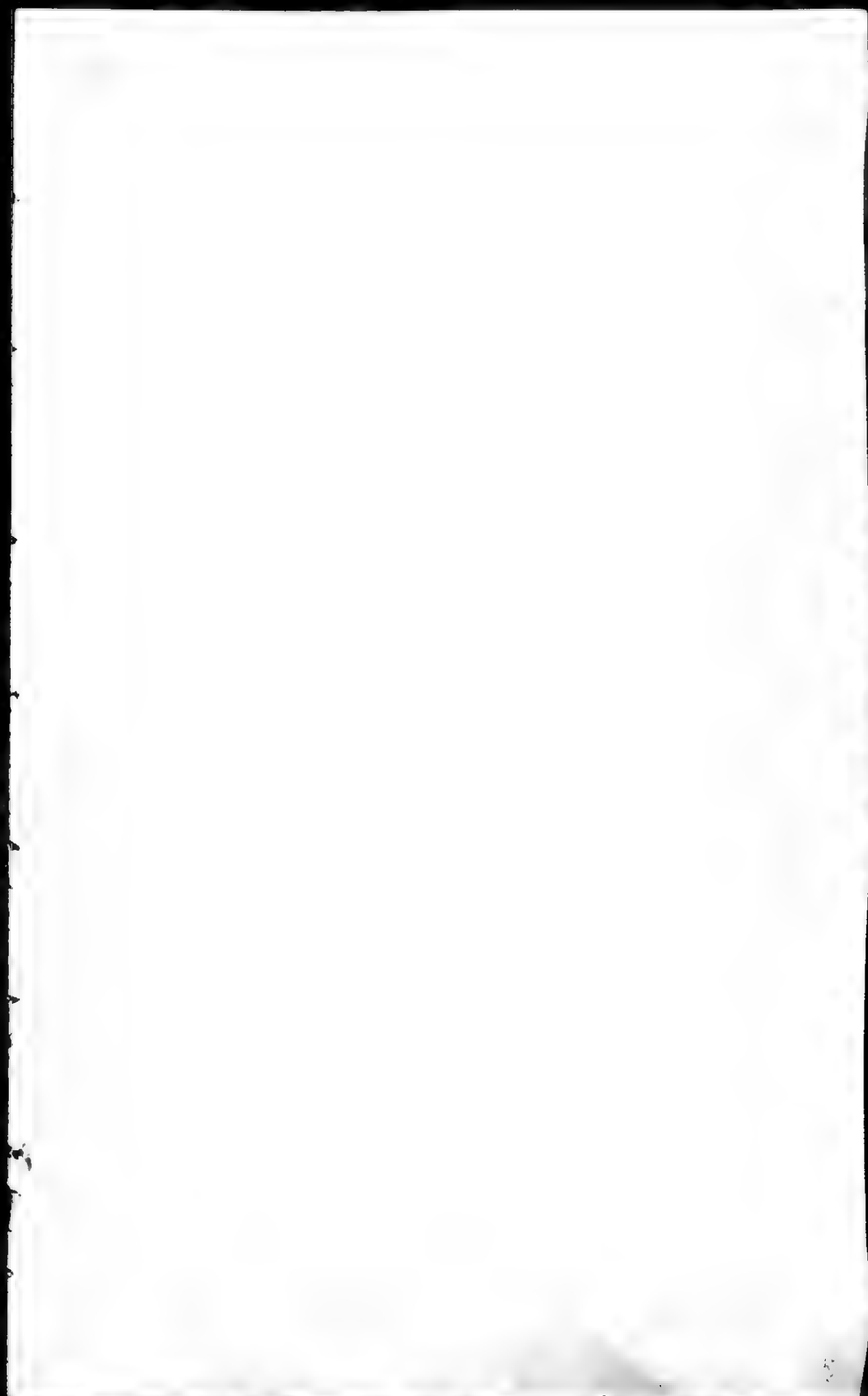
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## **APPENDIX**



## APPENDIX

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Filed August 5, 1966]

Civil Action #777-66

BANGOR AND AROOSTOOK RAILROAD COMPANY, ET AL.,  
*Plaintiffs,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Defendant.*

Civil Action #784-66

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,  
*Plaintiff,*

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,  
ET AL., *Defendants.*

### Affidavit of J. L. Shattuck

J. L. Shattuck, being duly sworn, deposes and says:

1. I am the Vice-President of the Brotherhood of Locomotive Firemen and Enginemen and make this affidavit in support of the application for a temporary restraining or other order in *Bangor and Aroostook Railroad Company, et al. v. Brotherhood of Locomotive Firemen and Enginemen*, Civil Action No. 777-66, and *Brotherhood of Locomotive Firemen and Enginemen v. The Atchison, Topeka and Santa Fe Railway Company, et al.*, Civil Action No. 784-66. As part of my responsibilities as Vice-President, I am being regularly informed by the Chairmen of the Brotherhood on the various railroads of the personnel actions being taken by the railroads.

2. In his Opinion on May 9, 1966, in the *Bangor and Atchison* cases, District Judge Holtzoff ruled against the Brotherhood in major part. He did, however, hold that, although the "Award and the operations under it created a new status in regard to rules and working conditions", "neither side may make changes unilaterally" in those rules and working conditions. He emphasized over and over again in his Opinion that the railroads could make no unilateral changes in working conditions after the expiration of the Award: "neither side may take any further affirmative steps under the Award after its termination date"; "a new status has been created and no change may be made in that status . . ."; "since the effective period of the Award has expired, no affirmative steps may be taken under it"; the "situation must be deemed frozen as of the close of the effective period of the Award"; and "there is no right or duty to take any affirmative step under the Award on the part of either side after the crucial date."

3. In his conclusions in his Opinion, District Judge Holtzoff held: "The provisions of the Award and actions taken under it during its effective period created a new set of rules and working conditions as of the date of its termination" and any "attempt to change the new status may be pursued only by serving appropriate notices under Section 6 of the Railway Labor Act . . ."

4. The Judgment entered on May 12, 1966, followed the Opinion: "After the expiration of the Award, the railroads cannot terminate the employment of firemen . . . and cannot offer comparable jobs to firemen . . . pursuant to the provisions of paragraph C(6) of Section II of the Award." The Award and the "actions taken thereunder created a new status which is to be maintained after the expiration of the Award until changed by agreement . . ." In explanation of the Judgment during the argument concerning its terms, Judge Holtzoff stated that "no step

can be taken under the Award, affirmative step, after the termination of its effective period . . .”

5. Paragraph C(6) of Section II of the Award provided that the railroads could offer comparable jobs to firemen with from two to ten years seniority and that such firemen would be required to take such comparable jobs. The Opinion and Judgment of Judge Holtzoff made clear that this right of the railroads to offer comparable jobs to such C(6) firemen did not continue after the expiration of the Award. Nevertheless, even though Judge Holtzoff forbade the offering of comparable jobs to persons who have less than ten years seniority, the railroads have since the expiration of the Award forced *less than comparable jobs* upon men with seniority *in excess of ten years*.

6. Judge Holtzoff's Opinion, Judgment and statements made clear beyond peradventure of doubt that no change can be made in the status or working conditions of firemen on and after March 31, 1966, without the agreement of the parties. It was the purpose of the Award, he said in his Opinion, to “ease any possible financial distress to the individuals concerned and to their families.” But the railroads have, since March 31, 1966, inflicted great financial and other distress upon the firemen and their families by making unilateral changes in their status and working conditions.

7. In view of the Opinion, Judgment and statements of Judge Holtzoff, the officers of the Brotherhood and their counsel believed, and so advised the Chairmen of the Brotherhood on the various railroads, that the railroads could not take any affirmative steps or actions that would in any way worsen the status or working conditions of the firemen as compared with their status and working conditions as of 12:01 a.m., on March 31. The officers of the Brotherhood and their counsel also believed, and so advised the Chairmen of the Brotherhood on the various railroads, that all seniority rights in existence prior to,



during, and at the expiration of the Award on each railroad remained in effect and the railroads were required to respect and honor said seniority.

8. Despite the Opinion, Judgment and statements of Judge Holtzoff and in direct violation thereof, a substantial number of the railroads who are plaintiffs in the *Bangor* case and defendants in the *Atchison* case have since March 31 (a) taken affirmative steps and actions and have made changes to worsen the working conditions of firemen for the purpose of harassing them to leave their employment and for the purpose of saving money by forcing such firemen into less desirable and less remunerative jobs, and (b) have denied firemen the seniority to which they are entitled. Said railroads have taken one or more of the following unilateral and affirmative steps and actions since March 31:

i. They have blanked desirable runs near the homes of firemen and have forced firemen to take less desirable runs at long distances from their homes.

ii. They have blanked desirable runs and forced firemen to take lower-paying and otherwise less desirable runs.

iii. They have blanked desirable runs and forced firemen on to the Extra Board.

iv. They have blanked desirable runs and forced firemen to less desirable runs in full crew states far from their homes.

v. They have blanked desirable runs when firemen went on vacation and forced the men to take poorer jobs when they returned from vacation; they thus also have denied seniority to junior firemen on these jobs during vacation periods.

vi. They have blanked runs when firemen were promoted to engineer either permanently or temporarily;

this has resulted in the denial of the exercise of seniority by junior firemen on these blanked runs where the fireman's promotion is permanent, and has denied the rights of the promoted firemen to their fireman runs if and when, for one reason or another, they return to the position of fireman.

vii. They have blanked runs when firemen exercised their seniority to bid in on passenger runs with the same effect as in vi.

viii. They have blanked new runs and thus denied the seniority of all firemen to those runs.

ix. They have blanked and unblanked jobs to deny firemen the overtime to which they were entitled under the rules and working conditions in effect at the expiration of the Award.

x. They have failed to issue bulletins with respect to blankable assignments and simply called men to fill jobs as they see fit on a day to day basis.

xi. They have blanked runs and used employees in other crafts in lieu of firemen.

xii. They have blanked runs and forced bumping situations in which the railroads save money by virtue of the fact that each bump results in lost runs.

xiii. When jobs have been unblanked in order to provide work for junior firemen, they have unblanked jobs at great distances from the homes of such junior firemen, when other jobs nearer home could have been unblanked.

xiv. They have refused to advertise unblanked runs thus depriving firemen of their seniority.

xv. They have denied restricted firemen all work and have otherwise harassed them.

xvi. They have run vetoed runs without firemen.

9. The railroads have taken the above actions at times to force firemen into undesirable or far-away vetoed jobs and at times simply to harass the men and to save money for the railroads where no vacancy on a vetoed job existed. Under Judge Holtzoff's Opinion, Judgment and statements, they have no right to take action unilaterally to change the status and worsen the working conditions of the firemen either to force them on to vetoed jobs or simply to harass them or to save money for the railroads.

10. As a result of these activities of the railroads, there is today a reign of terror among the firemen. No fireman, when he leaves his home in the morning, can be sure that he will not have to tell his family that night that he has been forced to some far-away, less desirable job, requiring the family to break all ties with the community to which they have devoted their lives. Firemen have even refused to request payment for the overtime they have worked for fear that they may be forced into another job that pays less miles away from home. The railroads have succeeded, in the words of the superintendent of the Missouri division of the Missouri Pacific Railroad, to "make it very unpleasant for some of the firemen."

11. Despite Judge Holtzoff's Opinion, Judgment and statements that no unilateral change can be made in working conditions and no affirmative steps or actions can be taken by the railroads to change the status as of March 31, the railroads have taken the above acts since March 31 and have threatened to continue said acts unless enjoined by the Court. The Brotherhood has called these matters to the attention of the railroads, locally and nationally, demanding that these actions and practices be discontinued and rescinded, but the railroads have refused to discontinue them in any way and have in fact made clear their intention to continue said acts on a day to day basis in the future. Unless a temporary restraining or other order is promptly entered, the limited rights of the fire-

men declared by Judge Holtzoff will soon become wholly meaningless.

[Signature and notarial certificate]

**BRIEF FOR APPELLEES IN NOS. 20,192 AND 20,193  
AND FOR APPELLANTS IN NOS. 20,215 AND 20,216**

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20,192**

---

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellant*,

*v.*

BANGOR AND AROOSTOOK RAILROAD COMPANY, ET AL.,  
*Appellees.*

---

**No. 20,193**

---

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellant*,

*v.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Appellees.*

[CASES CONTINUED ON INSIDE COVER]

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ON APPEALS FROM JUDGMENTS OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

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20,216.*

United States Court of Appeals  
for the District of Columbia Circuit

**FILED** AUG 19 1966

*Nathan J. Paulson*  
CLERK

[CASES CONTINUED FROM FRONT COVER]

**No. 20,215**

---

BANGOR AND AROOSTOOK RAILROAD COMPANY, ET AL.,  
*Appellants,*

*v.*

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellee.*

**No. 20,216**

---

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Appellants,*

*v.*

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellee.*

## QUESTIONS PRESENTED

In our opinion, the following questions are presented:

1. Upon the expiration of the two-year period in which the Award by Arbitration Board No. 282 "shall continue in force," do the modifications in fireman (helper) rules made by or pursuant to the Award, including provisions for the protection of existing employees, continue to apply until changed in accordance with the Railway Labor Act or do the old rules automatically revive and apply thereafter until changed in accordance with the Railway Labor Act?

2. Were notices of proposed changes in fireman (helper) rules purportedly served pursuant to Section 6 of the Railway Labor Act during the period of the Award premature and ineffective under the Railway Labor Act until the day after the expiration of the period in which the Award "shall continue in force?"

3. May the carriers be required under the Railway Labor Act to bargain about proposals to eradicate, both retroactively and prospectively, all that was accomplished under Public Law 88-108 and the Award by requiring the use of firemen on almost all locomotives, the rehiring of firemen separated from employment pursuant to the Award with the seniority they would have had if their employment had continued, and the payment of compensation to both former and existing firemen for any injuries allegedly inflicted upon them through applications of the Award?

4. Does the Norris-LaGuardia Act deprive the federal courts of jurisdiction to grant injunctive relief against strikes over the continued application by the carriers of their firemen (helper) rules as modified by or pursuant to the Award until such time as the "major" dispute procedures of the Railway Labor Act have been exhausted with respect to valid proposals under Section 6 of the Act to change such rules?

(i)

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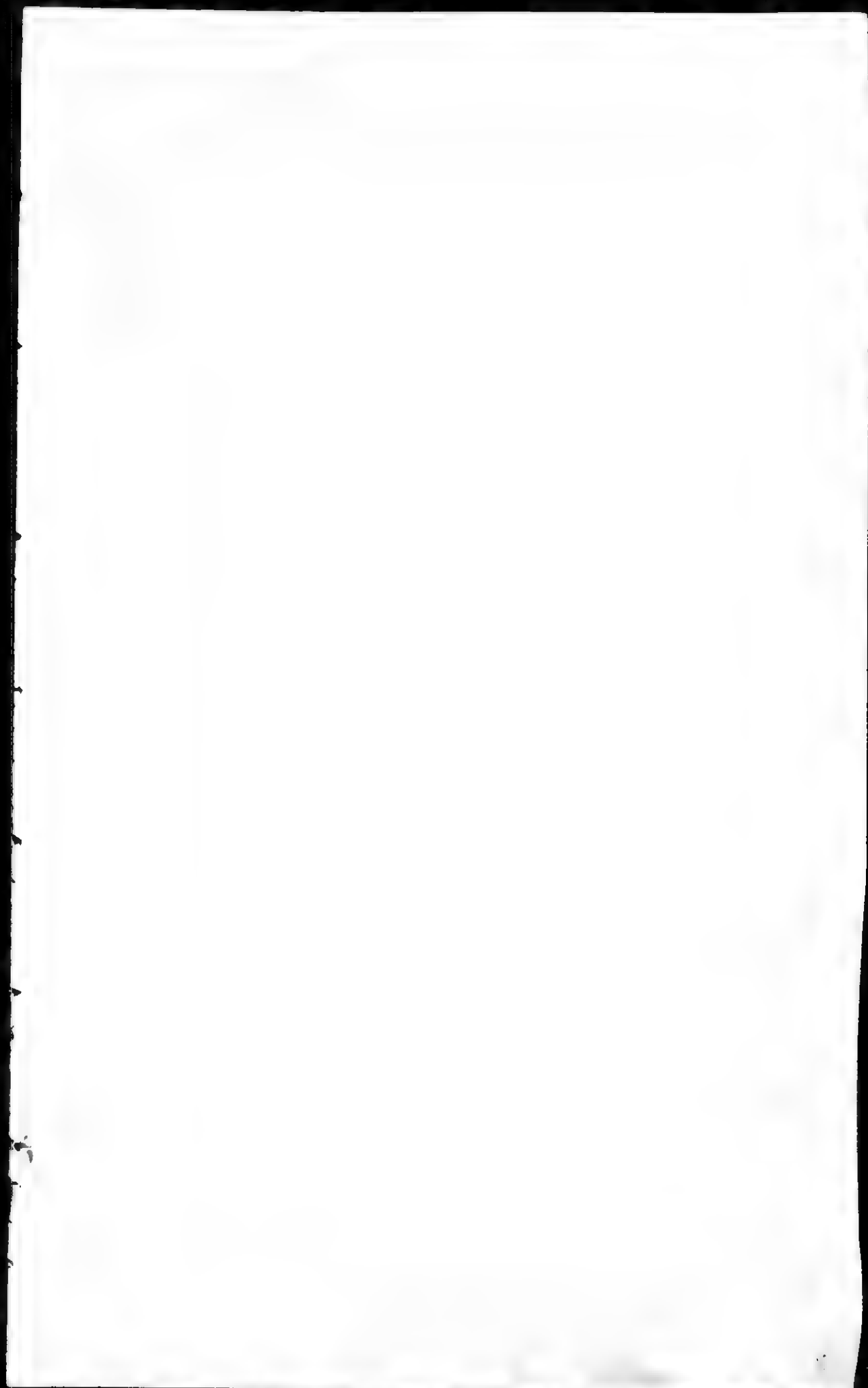
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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20,192**

---

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellant*,

v.

BANGOR AND AROOSTOOK RAILROAD COMPANY, ET AL.,  
*Appellees*.

---

**No. 20,193**

---

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellant*,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Appellees*.

---

**No. 20,215**

---

BANGOR AND AROOSTOOK RAILROAD COMPANY, ET AL.,  
*Appellants*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellee*.

---

**No. 20,216**

---

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, ET AL., *Appellants*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN, *Appellee*.

---

ON APPEALS FROM JUDGMENTS OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

**BRIEF FOR APPELLEES IN NOS. 20,192 AND 20,193  
AND FOR APPELLANTS IN NOS. 20,215 AND 20,216**

These are cross-appeals from identical judgments entered  
on May 12, 1966 in two consolidated cases. Appellant in  
Nos. 20,192 and 20,193 and Appellee in Nos. 20,215 and

20,216 is the Brotherhood of Locomotive Firemen and Enginemen, hereinafter referred to as the "BLF&E." Appellees in Nos. 20,192 and 20,193 and Appellants in Nos. 20,215 and 20,216, upon whose behalf this brief is filed, are 181 railroads, which are hereinafter collectively referred to as the "carriers." The appeals have been consolidated by order of this Court pursuant to a Joint Motion which also provided that all issues raised by either appeal would be briefed first by the BLF&E and then by the carriers, and that a reply brief may be filed by the BLF&E.

A number of other cases are pending here which in part involve similar issues. They include Docket Nos. 20,158 and 20,191, which are cross appeals by the Order of Railway Conductors and Brakemen and by the carriers from a judgment entered in a separate proceeding below, and Docket Nos. 20,152 and 20,172 which are cross appeals by the Brotherhood of Railroad Trainmen, a local thereof, and the Switchmen's Union of North America and by the carriers from another judgment entered in that proceeding. In a Memorandum and Order entered on June 15, 1966 in these cases, this Court directed that the three groups of appeals be heard at the same session before the same division.

### Statement of the Case

In 1959, the overmanning of trains resulting from obsolete work rules having little or no relation to actual manpower needs in the light of modern technological developments constituted a serious problem. See *Brotherhood of Locomotive Eng. v. Baltimore & Ohio R. Co.*, 310 F. 2d 503, 505-506 (7th Cir., 1962), aff'd, 372 U.S. 284 (1963). A May 18, 1959 Report by the Interstate Commerce Commission, for example, found that "there is confirmation of the belief that the railroad wage structure, including work rules and certain full-crew laws, may unjustifiably involve uneconomic

use of labor." *Railroad Passenger Train Deficit*, 306 I.C.C. 417, 480. On or about November 2, 1959, in an effort to overcome this problem, most of the nation's railroads served the unions representing their operating employees with notices under Section 6 of the Railway Labor Act (44 Stat. 582, as amended, 45 U.S.C. §156). While a number of proposals were made, the two relevant here proposed, in general, the elimination of all rules requiring the use of firemen (helpers) on locomotives (other than steam powered) in freight and yard service, and the elimination of all rules which required the use of a stipulated number of trainmen on crews in road and yard service, with both matters being left to managerial discretion. (J.A. 59-60, 70-72, 74). On or about September 7, 1960, the unions served the railroads with Section 6 notices of counterproposals which, among other things, would generally require the use of a fireman on all locomotives and the use of two trainmen on all road and yard crews (J.A. 60-61, 73, 74).

After unsuccessful negotiations by the parties, the President appointed a Presidential Railroad Commission to investigate the controversy and use its best efforts to bring about a settlement (J.A. 61, 74). In its February 28, 1962 Report to the President, the Commission recommended generally (p. 7) that "the rules governing the manning of engines and trains and the assignment of employees be revised to permit the elimination of unnecessary jobs and at the same time to safeguard the interests of the individual employees adversely affected." The Commission found that, although it was not possible to say "that nowhere in the United States is there in operation a single run which requires the services of a [fireman] to render it safe and efficient," such situations are so "unique" that they should not be made the subject of a general rule requiring the use of firemen (pp. 45-46). Accordingly, the Commission recommended that rules requiring the use of firemen be



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abrogated and that, subject to measures for the protection of men already employed, the carriers should be permitted in their discretion to discontinue firemen's assignments (pp. 48-50). As to crew-consist, the Commission determined that the existing rules, most of which had been developed more than 30 years ago and some of which went back to the 19th century (p. 55), had resulted in "some overmanning . . . but little undermanning" (p. 57). Accordingly, the Commission recommended that proposals for changes in crew-consist rules, if not agreed upon, be arbitrated by special tribunals applying specified guidelines, with various protections for the men already employed (pp. 59-60). These recommendations were accepted by the carriers but were rejected by the unions.<sup>1</sup>

Efforts by the National Mediation Board to mediate the dispute also were unsuccessful, and the Board terminated its services on July 16, 1962 after the unions refused a proffer of arbitration under Sections 7 and 8 of the Railway Labor Act. The carriers served notice that they intended to put their proposals into effect, and the unions resorted to litigation aimed at preventing that from being done. The Supreme Court eventually held that the November 2, 1959 Section 6 notices served by the carriers were valid, and that the carriers were free to implement their proposals by self-help as the procedures of the Railway Labor Act had been exhausted, subject to the possible creation of an emergency board under Section 10 of the Railway Labor Act. *Locomotive Engineers v. B. & O. R. Co.*, 372 U.S. 284 (1963).

An emergency board was appointed by the President under Section 10. The Report to the President by Emergency Board No. 154,<sup>2</sup> submitted on May 13, 1963, contained

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<sup>1</sup> See H. Rept. No. 713, 88th Cong., 1st Sess., 7.

<sup>2</sup> The Report is set out in full in Hearings on H. J. Res. 565 before the House Committee on Interstate and Foreign Commerce, 88th Cong., 1st Sess. (hereinafter referred to as "House Hearings"), 42-49.

recommendations which generally paralleled those made by the Presidential Railroad Commission, except for a suggestion that a special board procedure be utilized in resolving disputes over the use of firemen (helpers). Among other things, the Report noted that even "the brotherhoods do not contend that there are no jobs presently occupied by firemen which cannot be abolished" (House Hearings, at 45). The recommendations were accepted by the railroads, but rejected by the unions. H. Rept. No. 713, *supra* at 7.

Under Section 10 of the Railway Labor Act, "for thirty days after" an emergency board "has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose." 45 U.S.C. § 160. That 30-day period expired on June 12, 1963, and the carriers thereafter were free to implement their November 2, 1959 proposals, including the abolition of existing fireman (helper) and crew-consist work rules and the use of firemen and trainmen only as deemed necessary in the exercise of managerial discretion. On the other hand, the unions were free to strike or to resort to other self-help. *Locomotive Engineers v. B. & O. R. Co.*, *supra* at 291.

Further negotiations during the 30-day period and thereafter also were unsuccessful. A proposal by the Secretary of Labor for disposition of the fireman (helper) and crew-consist issues along the lines of the recommendations by the Emergency Board was accepted by the carriers but rejected by the unions; a proposal by the President to submit all issues to Justice Goldberg for final determination was accepted by the carriers but rejected by the unions; a proposal by the Secretary of Labor to submit the fireman (helper) and crew-consist issues to a board of arbitration under Sections 7 and 8 of the Railway Labor Act was accepted by the carriers and accepted in principle by unions, but procedural objections by the unions could not be worked

out. See H. Rept. No. 713, *supra* at 8, 12; *Opinion of the Neutral Members*, 41 Labor Arbitration 680, 683-684 (1963).

When it became apparent that a disastrous strike was imminent, the President proposed preventive legislation and the Congress responded by enacting P.L. 88-108 (77 Stat. 132). The provisions and legislative history of that statute will be discussed in detail in our Argument. For present purposes, it suffices to note that the Congress rejected the approach urged by the Administration—interim regulation by the Interstate Commerce Commission while the parties continued to negotiate in an effort to reach an agreement disposing of their 1959 and 1960 Section 6 notices. Rather, the key fireman (helper) and crew-consist issues were submitted to arbitration and the arbitration award was to constitute a “complete and final disposition” of the portions of the Section 6 notices raising those issues.<sup>3</sup> In upholding the validity of the Award, the courts concluded that Arbitration Board 282 had complied with that requirement. *Brotherhood of Loc. Fire. & Eng. v. Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (D. D.C., 1964), *aff’d per curiam*, 118 U.S. App. D.C. 100, 331 F.2d 1020 (1964), *cert. den.*, 377 U.S. 918 (1964).

As to the fireman (helper) issue, the Board was “able to develop and complete the parties’ tentative agreements concerning the treatment of individual firemen,” but “found no substantial structure of agreement . . . concerning the proposed elimination of firemen’s jobs.” *Opinion of the Neutral Members, supra* at 686. After an independent review of the evidence, the Board agreed with the Presidential Railroad Commission “that firemen-helpers are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a

<sup>3</sup> Section 6 of P.L. 88-108 required the parties to resume collective bargaining on the issues which were not submitted to arbitration and an agreement disposing of those issues was reached on June 25, 1964 (J.A. 65, 74).

national rule or local rules requiring their assignment on all such diesels." *Id.*, at 688. From its "study of the record," the Board was "convinced . . . that the number of road freight and yard assignments in which considerations of safety and efficiency dictate the need of firemen is relatively small," and that a procedure which would permit "the firemen's organizations sole discretion to decide that firemen must be used in up to ten per cent of all crew assignments . . . provided a sufficient margin for error." *Id.*, at 691.

Accordingly, Section II of the Award modified the existing rules governing the use of firemen so as to permit the eventual elimination of firemen on all but 10% of the regular assignments on diesel locomotives in freight and yard service. Generous protections were provided, however, for existing employees. In general, firemen who had less than two years seniority as of the effective date of the Award could be separated from employment upon the payment of substantial separation allowances, those with between two and ten years seniority could be offered comparable jobs (with five-year guarantees against any reduction in wages and the payment of relocation expenses) and separated from employment upon the payment of substantial separation allowances if they refused to accept such job offers, and those with more than ten years seniority were to be retained in engine service unless they retired, were discharged for cause or otherwise were removed from employment by natural attrition. J.A. 108-114. The carriers have reduced the number of firemen employed by about 18,000, paid some \$36,000,000 in separation allowances and provided comparable jobs to some 1,200 former firemen, pursuant to Section II of the Award (J.A. 132).

Insofar as the crew-consist issue was concerned, the Board found that the existing "myriad of local arrangements has led to numerous inconsistencies in the manning of crews," that "some of the existing rules, originating as they did

more than a half-century ago, are anachronistic and do not reflect the present state of railroad technology and operating conditions," that "some overmanning exists in road and yard crews as a result of schedule rules and local agreements," and that, although "the evidence of undermanning is less persuasive, we must also acknowledge this possibility on some assignments." *Opinion of the Neutral Members, supra*, at 693-694. In substantial accordance with the tentative agreements of the parties (*id.*, at 695-696), Section III of the Award established a procedure whereby proposed changes in crew-consist rules would be determined by special boards of adjustment if not agreed upon by the parties. Employees subject to Section III could not be separated from employment pursuant thereto, and were to be retained as crew-consist employees unless they retired, were discharged for cause or otherwise were removed from employment by natural attrition. J.A. 115-120.

Section II-E of the Award (J.A. 114-115) provided for the establishment of a National Joint Board "charged with the responsibility for making an extensive and continuing study of the experience in road freight and yard service with and without the employment of firemen (helpers) during the period that this Award remains in effect," and to "issue to the parties a report based on its study" within three-months of the expiration of the Award. The Report of the National Joint Board was issued on January 5, 1966.<sup>4</sup> In that Report, the majority concluded that the elimination of firemen had not resulted in an undue work burden on other employees (pp. 18-33); that the earnings of firemen retained in employment generally had increased and instances of actual hardship upon individual firemen as a

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<sup>4</sup> The Report is in the record filed with this Court, but has not been included in the Joint Appendix because of its length. The representative of the BLF&E on the Joint Board filed a dissenting statement, which also is in the record.

result of application of the Award were rare (pp. 34-63); and that the elimination of firemen had not adversely affected safety of operations (pp. 64-102) or the efficiency of operations (pp. 103-120).

Section IV of the Award (J.A. 121) provides, pursuant to Section 4 of P. L. 88-108, that the Award "shall continue in force for two years from the date it takes effect, unless the parties agree otherwise." The effective date of the Award was January 25, 1964, but the carriers and the BLF&E agreed that it should "continue in force" through March 30, 1966 (J.A. 67, 74). On March 28, 1966, the carriers obtained a temporary restraining order against strikes by the BLF&E over any dispute as to the rules to be applied by the carriers after the expiration of that period (J.A. 96-97), but the BLF&E nonetheless struck several of the carriers in the early morning hours of March 31, 1966, which strikes were specifically enjoined by a Supplement to Temporary Restraining Order entered on March 31, 1966 (J.A. 98-100). The temporary restraining order as supplemented was extended from time to time, by consent, until entry of the judgments granting permanent injunctive relief (J.A. 101-104).

On or about November 15, 1965, the BLF&E purported to serve most of the carriers under Section 6 of the Railway Labor Act with notice of proposals relating to the subject matter of the Award. We will defer analysis of those proposals until our Argument, merely noting at this time that they were divided into three parts identified as "Notice No. 1," "Notice No. 2" and "Notice No. 3" (J.A. 132-134, 144-163). The carriers took the position that such notices were premature, because served prior to the expiration of the Award, and were otherwise invalid (J.A. 134, 164-166).

In its judgments entered on May 12, 1966 (J.A. 231-237), in the consolidated cases, the District Court ruled, among

other things, that the carriers could not terminate the employment of firemen (helpers) or offer comparable jobs thereto under Section II-C of the Award after the expiration of the Award; that the rules in effect prior to the enactment of P. L. 88-108 were not restored, and that the modifications in such rules by or pursuant to the Award (including the provisions for protection of existing employees) continued to apply after the expiration of the Award until changed in accordance with the Railway Labor Act; that all aspects of the proposals purportedly served by the BLF&E under Section 6 of the Railway Labor Act prior to the expiration of the Award were premature and could not become effective until the day after the expiration of the Award; and that those aspects of the proposals identified as "Notice No. 1" and "Notice No. 2" were invalid and non-bargainable at any time.<sup>5</sup> The judgments also enjoined the BLF&E from striking over, in general, actions or refusals to act by the carriers which are authorized by the judgment.

### Statutes Involved

We set forth in Appendix A hereto certain statutory provisions in addition to those set forth in the Appendix to the brief filed by the BLF&E.

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<sup>5</sup> The judgment "does not determine any issue as to whether the railroads have an obligation after the expiration of the Award to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to that aspect of the proposals served by the BLF&E identified as 'Notice No. 3', and is without prejudice to the rights of any party in that regard" (J.A. 234-235). The parties had stipulated that any issue as to the validity or bargainability of that aspect of the BLF&E proposals, apart from the issue as to its prematurity because served prior to the expiration of the Award, would not be decided at the trial and could be raised in some other or later proceeding (J.A. 140; see J.A. 226).



### Summary of Argument

The claim by the BLF&E that the old rules were automatically restored upon the expiration of the Award is without support in the language or legislative history of P. L. 88-108. Rather, that language and legislative history demonstrate that the Congress intentionally integrated the arbitration of the fireman (helper) and crew-consist issues into the "time-tested provisions of the Railway Labor Act" under which the rules established by an agreement or arbitration award continue to apply after the expiration of the term of such agreement or award until changed in accordance with the "major" dispute procedures of the Act. While those procedures were supplanted during the two-year period of the Award, upon the expiration of that period the parties once more were subjected to the "regular established procedures of collective bargaining" under the Act upon the basis of the rules established by or pursuant to the Award, which rules continue to apply until changed in accordance with the Railway Labor Act. The Congress could not reasonably have intended and did not intend to reinstate the old rules, which have been condemned by several impartial governmental bodies, in preference to a continuation of the modification of those rules made by an arbitration board dominated by impartial neutral members, and many provisions of the Award anticipated by the Congress are inconsistent with any such intent.

All of the modifications in the prior rules made by or pursuant to the Award continue to apply until changed in accordance with the Railway Labor Act, including those which authorize the separation from employment of certain firemen upon payment of separation allowances. There is no basis for holding that some of the modifications made by the Award do not continue to apply, although others do continue to apply. The BLF&E does not contend otherwise,



and the court below erred in holding that some of the modifications made by or pursuant to the Award terminated upon the expiration of the Award.

Notices proposing changes in fireman (helper) rules, purportedly served by the BLF&E under Section 6 of the Railway Labor Act during the period of the Award, were premature and could not become effective until the day after the expiration of the Award. To permit a party to require bargaining upon such notices and to exhaust the procedures of the Railway Labor Act with respect thereto during the period of the Award would be contrary to the language and legislative history of P. L. 88-108 and to the provisions of the Award.

In such notices, the BLF&E proposed in effect to eradicate all that had been accomplished under P. L. 88-108 and the Award by requiring the use of firemen on almost all locomotives, the rehiring of those individuals separated from employment pursuant to the Award with the seniority they would have had if their employment had continued, and the payment of compensation for all injuries allegedly inflicted on both former and present firemen through applications of the Award. They do not constitute good faith proposals for changes in future "rates of pay, rules, or working conditions" within the meaning of those terms as used in the Railway Labor Act and are contrary to the intent of the Congress in enacting P. L. 88-108, and thus the carriers cannot be required to bargain about such proposals under the Railway Labor Act.

As the legislative history and many cases demonstrate, the Norris-LaGuardia Act does not apply, either in whole or in part, to injunctions requiring compliance with, or preventing violations of, the mandates of the Railway Labor Act. Among those mandates is a requirement that no resort to self help, including strikes, be had with respect to pro-

posed changes in "rates of pay, rules, or working conditions" until the "major" dispute provisions of the Railway Labor Act have been exhausted. Hence, Norris-LaGuardia does not apply to the injunction issued below against strikes by the BLF&E over continued application by the carriers of their rules as modified by or pursuant to the Award until such rules have been changed by agreement or the procedures of the Railway Labor Act have been exhausted with respect to valid proposals under Section 6 to change such rules.

### **Argument**

The fundamental issue before the Court is whether the carriers once again are to be saddled with obsolete and inefficient work rules which resulted in overmanning that has been condemned by the every governmental body which has considered the matter, with the consequent necessity of hiring thousands of unnecessary employees who would perform no useful function to the cost of the public as well as of the carriers themselves. The Congress could not reasonably have intended such a result and we demonstrate in this brief that it did not so intend. Rather, the rules and procedures established by or pursuant to the Award were intended to continue to apply after the expiration of the Award until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to valid proposals under Section 6 of that Act to change such rules and procedures. The effect of the expiration of the two-year period during which the Award "shall continue in force" is to subject the parties once again to normal collective bargaining under the Railway Labor Act with respect to future changes in the rules and procedures established by or pursuant to the Award which reasonably may be said to be justified by the experience of the parties

under those rules and procedures in the light of the findings by Arbitration Board No. 282.

**I The Fireman (Helper) Rules in Effect Prior to the Award Were Not Automatically Restored Upon the Expiration of the Two-Year Period of the Award.**

The BLF&E contends that the rules in effect prior to the effective date of the Award automatically revived upon the expiration of the Award and continue to apply thereafter until changed pursuant to the Railway Labor Act, with one apparent exception. On page 31 of its brief, the BLF&E states that it has "*never* contended and does *not now* contend that the rights of individual firemen are not 'vested' or that they can somehow be 'wiped out'...."<sup>6</sup> In short, the BLF&E takes the position that the rights of the employees under the protective provisions of the Award—separation allowances, comparable jobs with a five-year guarantee against reduction in wages, or continued employment in engine served until removed by natural attrition (depending upon the seniority of the particular employee)—continue after the expiration of the Award, but that the rights of the carriers under other provisions of the Award "are not 'vested'" and "can somehow be 'wiped out'" immediately upon expiration of the Award. This contradiction is explainable only on the basis of self-interest. If the Congress intended to nullify those modifications of the prior rules which benefitted the carriers upon the expiration of

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<sup>6</sup> We do not understand the contention by the BLF&E (Brief, at 31) that there is no issue in the case as to whether the rights of the individual employees under the protective provisions of the Award continue after the expiration of the Award. The carriers requested a declaration that all of the rules and procedures established by the Award, including the protective provisions, continue to apply (J.A. 68, 69-70), while the BLF&E requested a declaration that the Award had "no force and effect" (J.A. 84). The judgments specifically included a declaration that the rights of the employees under the protective provisions continue (J.A. 233).

the Award, as the BLF&E contends, plainly it also intended to nullify those modifications which benefitted the employees. The BLF&E does not even claim that there is a basis in P. L. 88-108 or its legislative history for a distinction in that regard.

As we demonstrate below, however, the contention by the BLF&E that the provisions of the Award benefitting the carriers are "wiped out" upon expiration of the Award, and the old rules automatically revived, is unsupported by either the statutory language or the legislative history. Both the statute and the legislative history, on the other hand, support the carriers' view that the modifications in the old rules made by or pursuant to the Award, including the protective provisions thereof, continue to apply after the expiration of the Award until changed in accordance with the Railway Labor.

*A. The Statutory Language Does Not Support the Contention by the BLF&E.*

Section 4 of P. L. 88-108 provides that the Award "shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise." The BLF&E contends (Brief, at 14) that this provision is "dispositive" and "require[s] the conclusion" that the old rules were automatically restored upon the expiration of the Award. None of the unions involved in the companion cases makes such a contention, for obvious reasons. Section 4 of P. L. 88-108 merely poses the issue of what rules are to apply after the expiration of the period in which the Award "shall continue in force," and does not in any way purport to be dispositive of that issue. We show, at pp. 22-28, *infra*, that other provisions of P. L. 88-108 integrated the arbitration by Board 282 into the provisions

of the Railway Labor Act in such a manner as to assure the continued application of the rules as modified by the Award after the expiration of the Award. Before doing so, however, we demonstrate that no other provision of P. L. 88-108 or of the Railway Labor Act automatically restores the rules in effect prior to the Award upon the expiration of the Award.

Insofar as the Railway Labor Act is concerned, we have related the circumstances whereby the carriers have been free since June 12, 1963 to abolish the rules which the BLF&E now contends must be applied after the expiration of the Award until changed by agreement or until the procedures of the Railway Labor Act have been exhausted with respect to new notices served under Section 6 of that Act. As the Supreme Court expressly held, the November 2, 1959 Section 6 notices proposing to eliminate those rules were valid and could be implemented by the carriers in the exercise of self-help thirty days after the emergency board submitted its report to the President. See pp. 3-5, *supra*. Apart from P. L. 88-108, consequently, there is no basis for a contention that the railroads are now required to apply the old rules.

P. L. 88-108 did reimpose upon the railroads, for a limited period, the obligation to restore and observe the rules in effect prior to November 2, 1959. Section 1 provided:

"That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence

shall be forthwith rescinded and the status existing immediately prior to such action restored."

The above-quoted provision of P. L. 88-108 is the reason, of course, that the rules which the carriers proposed to eliminate in their November 2, 1959 Section 6 notices were in effect immediately prior to the effective date of the Award.

But neither Section 1 nor any other provision of P. L. 88-108 requires the railroads to observe the old rules after the expiration of the Award. The prohibition in Section 1 against any change in the rules encompassed by the Section 6 notices is expressly subject to an exception for changes made "by agreement, or pursuant to an arbitration award as hereinafter provided," and it is such changes which are now in issue. Furthermore, Section 8 of P. L. 88-108 provided that the "joint resolution shall expire one hundred and eighty days after the date of its enactment" on August 28, 1963. Hence, any obligation imposed upon the railroads by Section 1 to observe the old rules terminated on February 24, 1964 at the latest, except insofar as those rules were adopted or continued in effect by the Award or by agreement. In thus requiring the railroads to restore and observe the old rules for a limited period of 180 days only and subject to any changes made pursuant to the Award, the clear implication is that the Congress in P. L. 88-108 did not intend those rules to be restored once again some two years later after the expiration of the Award.

*B. The Provisions of the Award Do Not Support the Contention by the BLF&E.*

The provision in Section IV of the Award that it "shall continue in force for two years from the date it takes effect, unless the parties agree otherwise," like the similar provision in Section 4 of P. L. 88-108, merely poses the issue of

what rules are to apply after the expiration of the two-year period and obviously is not dispositive of that issue. The provision in Section II-A of the Award, also relied upon by the BLF&E (Brief, at 16-18), while not dispositive, is suggestive of the solution to the issue posed by Section IV, but in a manner contrary to that contended by the BLF&E. Section II-A provides that:

“All agreements, rules, regulations, interpretations, and practices, however established, shall continue undisturbed except as modified by the terms of the Award.”

By this provision, the old rules were continued in effect, but only “as modified by the terms of the Award.” The BLF&E would have this Court hold that that part of Section II-A continuing the old rules is effective after the expiration of the Award, but not that part of Section II-A which continues those rules “as modified by the terms of the Award.” The plain language of Section II-A demonstrates, however, that if the old rules have any effect after the expiration of the Award, they do so only as they have been “modified by the terms of this Award.”

We point out, at pp. 25-26, *infra*, that Section II-A confirms our view that the modifications in the existing rules made by or pursuant to the Award have become part of the “agreements” between the parties, so as to be subject to change only under Section 6 of the Railway Labor Act and the other “major” dispute procedures of that Act, and we also demonstrate, at pp. 28-31, *infra*, that other provisions of the Award are inconsistent with any intention to restore the old rules upon the expiration of the Award. For present purposes, however, it suffices to note that the provisions of the Award do not support the contention by the BLF&E.



*C. The Legislative History Does Not Support the Contention by the BLF&E.*

To the extent that the BLF&E relies upon statements in the committee reports that the Award would continue in force for only two years (Brief, at 19-20), that language merely poses the issue of what rules are to apply thereafter, as does the similar language in P. L. 88-108 and the Award. So, too, statements as to the "temporary" or "interim" nature of the proposed legislation do not throw any light upon the issue as to what would occur after the expiration of the Award.<sup>7</sup> Under the carriers' view as under that of the BLF&E, the legislation did not settle the matter permanently but only for a limited period. After the expiration of the Award, the fireman (helper) issue may be reopened by the service of valid Section 6 notices and, if negotiations, mediation and possible emergency board consideration does not bring about an agreement, the parties again will be free to resort to self help.

The BLF&E also relies upon some statements made during the committee hearings, primarily by Secretary of Labor Wirtz, to the effect that the rules to be promulgated by the Interstate Commerce Commission pursuant to the bill then under consideration would be operative only for an interim period and would no longer be effective at the end of that period. That indeed would have been the situation under

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<sup>7</sup> The BLF&E quotes such statements by the President (Brief, at 18), by Senator Morse (*id.*, at 21), and in the committee hearings (*id.*, at 23-26). We point out in the text that the committee hearings related to a bill proposed by the Administration which was rejected by the Congress, and this is also true, of course, with respect to the Presidential message accompanying the submission of the Administration's bill. So, too, the statement by Senator Morse, in its reference to "the Commission," clearly was based upon the Administration's bill which would have provided for interim regulation by the Interstate Commerce Commission. The statement by Representative Harris, quoted by the BLF&E (Brief, at 21-22), supports the carriers' position. See pp. 24-25, *infra*.



the bill proposed by the Administration to which the committee hearings were devoted,<sup>8</sup> but even under that bill—which was rejected by the Congress—the old rules would not have been automatically restored at the end of the interim period. Rather, the carriers could have implemented their 1959 Section 6 notices to abolish the old rules and the unions could have struck, in the absence of an agreement or further legislation.

The Administration's bill provided for regulation by the I.C.C. of all the issues raised by the 1959 and 1960 Section 6 notices, through interim rules that would "remain operative until the parties reach agreement regarding the matter involved, or if no agreement is reached, for two years following the date the interim rule goes into effect." The bill did not contain any provision for disposition of the Section 6 notices. Rather it provided for "continued collective bargaining" upon those notices and that, if no agreement was reached prior to the expiration of the I.C.C. rules, the President should report to the Congress "and make such further recommendations, if any, as he deems appropriate, including his recommendation as to whether this joint resolution should be extended." House Hearings, at 1-3.

We have set forth in Appendix B hereto further excerpts from the testimony by Secretary Wirtz in the committee hearings which demonstrate more fully the Administration's understanding of what the situation would be under its bill following the expiration of the rules to be promulgated by the I.C.C. Those comments confirm that the bill, if enacted, would not have affected the 1959 and 1960 Section 6 notices and that bargaining was to continue under those notices. While the Administration was optimistic about the possibility of an agreement disposing of the dispute

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<sup>8</sup> That bill is set forth in the House Hearings, at 1-3, and is the Hearings on S. J. Res. 102 before the Senate Committee on Commerce, 88th Cong., 1st Sess. (hereinafter referred to as "Senate Hearings") 1-3.

created by the notices prior to the expiration of the period of I.C.C. regulation, if no agreement was reached and in the absence of further legislation the situation upon the expiration of that period would be the same as that existing at the time the bill was being considered—since the Section 6 notices would remain outstanding and the procedures of the Railway Labor Act had been exhausted, the carriers could implement their notices by abolishing the old rules and the unions could strike.

But, as the testimony by Secretary Wirtz further reveals, the Administration recognized that a nation-wide railroad strike would be as intolerable at the later time when I.C.C. regulation ended as it was at the time the legislation was being considered. The bill thus provided for the President to report to the Congress and recommend what should be done, and Secretary Wirtz expected that an extension of the legislation for another interim period would be recommended. Indeed, a special session probably would have been called for that purpose if necessary. As a practical matter, consequently, the Administration contemplated a further legislative extension of the I.C.C. rules if the dispute was not settled by agreement.<sup>9</sup>

The only contrary interpretation of the Administration's bill was that of Max Malin, counsel for the Brotherhood of Locomotive Engineers, who thought that the I.C.C. rules would remain in effect after the two-year period but would then be subject to change under the Railway Labor Act. House Hearings, at 682. No one suggested that the old rules would be automatically reinstated and remain in effect until

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<sup>9</sup> President Gilbert of the BLF&E testified that "I further have a strong feeling that at the expiration of . . . 2 years or 10 years, the same medium to oppose us from our exercise of our self help would be imposed upon us." House Hearings, at 822; see, also, *id.* at 805. And see testimony on behalf of the unions by Messrs. Luna (*id.*, at 904), Schoene (*id.*, at 989), Speirs (Senate Hearings, at 580), and Schoene (*id.*, at 623-624).

changed in accordance with Railway Labor Act, as the unions now contend, either under the Administration's bill or under the bill enacted as P. L. 88-108.<sup>10</sup>

*D. The Congress Integrated the Arbitration under P. L. 88-108 into the Railway Labor Act so that the Rules and Procedures Established by the Award Would Continue to Apply after the Expiration of the Award until Changed in Accordance with that Act.*

No one contends that the effect of the expiration of the Award, under P. L. 88-108, is comparable to the situation which the Administration understood would exist following the expiration of the I.C.C. rules if its bill had been enacted and in the absence of an agreement or further legislation. That is, no one contends that the 1959 and 1960 Section 6 notices remain outstanding with the carriers free to implement their notices and the unions free to strike. The reason for this is clear. In substantially revising the Administration's bill, the Congress provided (P. L. 88-108, §3) that the Award was to constitute a "complete and final disposition" of the fireman (helper) and crew-consist portions of those notices and the courts have held that the Award did just that. See p. 6, *supra*. Hence, unlike the situation which would have existed under the Administration's bill, those notices have been disposed of and are not available to provide a basis for a resort to self help by either the carriers or the unions.

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<sup>10</sup> The reliance by the BLF&E (Brief, at 27-30) upon *Engineers v. Chicago, R. I. & P. Co.*, 382 U.S. 423 (1966), and *Railway Clerks v. Florida E. C. R. Co.*, 384 U.S. 238 (1966), can be disposed of in a footnote. In neither case did the Supreme Court discuss or purport to decide the issue as to the rules to be applied after the expiration of the Award. Insofar as P.L. 88-108 and the Award are concerned, the *Engineers* case held only that they did not pre-empt state laws governing the manning of trains. The *Clerks* case neither involved nor in any way referred to P.L. 88-108 and the Award.

The questioning of Secretary Wirtz and others by members of the congressional committees indicated that at least some of the members did not share the Administration's optimism about the chances of a voluntary agreement, that they did not relish the prospect of having the matter brought back to the Congress at a time when a strike once more would be imminent unless the Congress acted, and that they were concerned about the possibility that the "temporary" legislation might in effect become permanent by reason of numerous extensions.<sup>11</sup> As stated in S. Rept. No. 459, 88th Cong., 1st Sess., at 10:

"A failure to provide for a complete solution which would terminate the dispute at this time might well result in the necessity for a resumption of congressional activity in a few months' time. The committee has sought to avoid this possibility, both because of its distaste for legislating solutions to labor-management disputes and because of the dangers of repeated congressional intervention in this field."

Although the Congress provided for the eventual expiration of P. L. 88-108 and the Award, as such, it did not intend to make the Award any less a "complete and final disposition" of the disputes that the Award resolved. Rather, as the Congress said in the Preamble to P. L. 88-108, it sought to achieve its ends "in a manner that preserves and prefers solutions reached through collective bargaining." Accordingly, it provided for expiration of the Award after two

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<sup>11</sup> See *e.g.*, the questions in the Senate Hearings by Senators Pastore (pp. 50, 660), Cotton (p. 55), Scott (p. 61) and Hartke (pp. 371, 412); and the questions in the House Hearings by Representatives Springer (pp. 55-56, 174), Rogers of Texas (pp. 59-60), Glenn (p. 64), Nelson (p. 65), Rogers of Florida (p. 69) and Broyhill (p. 559). See, also, the testimony in the Senate Hearings by Mr. Malin (p. 449) and Mr. Schoene (pp. 623-624), and the testimony in the House Hearings by Mr. Gilbert (pp. 805, 821-822), Mr. Luna (p. 904) and Mr. Schoene (p. 989).

years so that the parties might then resume normal relations under the Railway Labor Act upon the basis of the work rules as modified by the Award. As Chairman Harris of the House Interstate and Foreign Commerce Committee explained (109 Cong. Rec. 15279):<sup>12</sup>

“[W]e have been trying to take a course that would bring these issues to final resolution where they could be settled. The resolution provides that on the two major issues, the order of the arbitration board would be in force for a period of 2 years. *Then the issues go back under the regular established procedure of collective bargaining.* (Emphasis added.)

Shortly thereafter, Chairman Harris reiterated that explanation, as follows (109 Cong. Rec. 15231):

“Mr. FULTON on Pennsylvania. And at the end of a two-year period that these arbitration rulings have been in effect, what would happen then?

“Mr. HARRIS. *As I explained a moment ago, it goes back to the usual collective bargaining processes.*

“Mr. FULTON of Pennsylvania. So then it is as if this resolution had never been passed at that time?

“Mr. HARRIS. That is true.” (Emphasis added.)

The “usual collective bargaining processes” are, of course, those provided by the “major” dispute provisions of the Railway Labor Act. See pp. 25-26, *infra*. After the expiration of the two-year period of the Award, those processes may be invoked once again to seek changes in the existing fireman (helper) and crew-consist rules—i.e.,

<sup>12</sup> The weight to which the explanation by Chairman Harris is entitled is indicated by the reliance placed upon his statements by the Supreme Court with regard to another aspect of P.L. 88-108. *Engineers v. Chicago, R. I. & P. R. Co.*, 382 U.S. 423, 434-435 (1966).

the rules as modified by or pursuant to the Award—just “as if this resolution had never been passed. . . .” But, that could not be done prior to the expiration of the Award.

The Congress achieved its objective by integrating the arbitration into the Railway Labor Act. Section 4 of P. L. 88-108 provided that, to the extent possible, “the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act, [and] the board’s award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act.” Thus, as is stated in S. Rept. No. 459, *supra*, at 3, P. L. 88-108 “adopt[ed] the time-tested provisions of the Railways Labor Act” in effectuating the congressional purpose to insure a peaceful settlement of the work-rules dispute “by collective bargaining where possible and by arbitration where bargaining has not succeeded.” Although the parties to the dispute had agreed in principle to arbitration of the fireman (helper) and crew-consist issues prior to the enactment of P. L. 88-108, they had “been unable to agree upon the terms and procedures of an arbitration agreement”<sup>12</sup> such as is required by Section 7 First (45 U.S.C. § 157 First) of the Railway Labor Act. The Congress in effect thus supplanted the usual agreement to arbitrate. *Brotherhood of Loc. Fire. & Eng. v. Chicago, B. & Q. R. Co.*, *supra*, 225 F. Supp. at 18.

Under “the time-tested provisions of the Railway Labor Act,” the expiration of the period in which an arbitration award is “in force” or the expiration of the term of a voluntary agreement, does not terminate the parties’ obligation to comply with the rules prescribed by the award or agreement. That Act imposes upon the parties the duty “to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working

<sup>12</sup> Preamble, P.L. 88-108. See, also, H. Rept. No. 459, *supra* at 3, 9; S. Rept. No. 713, *supra* at 3, 12-13.

conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier. . . ." 45 U.S.C. §152 First. When the dispute involves "an intended change in agreements affecting rates of pay, rules, or working conditions," at least 30-days notice of the intended change must be given and a conference held thereon. 45 U.S.C. §156. Thereafter, such "major" disputes are subject to mediation by the National Mediation Board (45 U.S.C. §§155, 156), a proffer of arbitration (45 U.S.C. §§155, 157, 158), and possible consideration by an emergency board (45 U.S.C. §160). See, generally, *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711, 722-728 (1945). Until an agreement is reached or these procedures are exhausted, the existing "rates of pay, rules, or working conditions" which are in dispute must be maintained. *E.g.*, *Railway Clerks v. Florida E. C. R. Co.*, *supra*; *Locomotive Engineers v. B. & O. R. Co.*, *supra*.

These provisions of the Railway Labor Act respecting "major" disputes, therefore, plainly contemplate that "agreements affecting rates of pay, rules, or working conditions" in the industry shall be arrived at either through voluntary settlement of disputes or by the award of an arbitration board pursuant to an agreement to arbitrate. When an arbitration award settles a dispute to which a Section 6 notice gives rise, it affects a change in and its terms become a part of the existing agreements between the parties—just as did the Award, in terms, in this case. See pp. 17-18, *supra*. Subsequent changes in the "rates of pay, rules, or working conditions" provided for, either in a voluntary agreement or an arbitration award, can be brought about only by a further invocation of part or all of the same procedures, commencing with notices under



Section 6, and do not result automatically from the expiration of the term of an agreement or award.

Thus, in *Manning v. American Airlines, Inc.*, 329 F. 2d 32 (2d Cir., 1964), an agreement establishing rules for the check-off of union dues provided that it was to "continue in full force and effect until April 30, 1963, and shall be subject to renewal thereafter only by mutual agreement of the parties hereto." The Court held that the expiration of the term of the agreement, without renewal thereof, did not terminate the obligation of the carrier to continue to observe the check-off rule. In so holding, the Court stated (329 F. 2d, at 34) that:

"The effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination. If the basic agreement of 1958 had no automatic renewal clause, § 6 would have nonetheless applied; unless the terms of the agreement were still to be followed there would be 'an intended change' which would bring into play the thirty-day notice provision of § 6 and with it the requirement of the second section that the *status quo* be maintained until compliance with all demands of the section was had."

And, as the Court further stated (*ibid.*), "the very purpose of §6 is to stabilize relations by artificially extending the lives of agreements for a limited period regardless of the parties' intentions."

To summarize, the Congress contemplated a relatively short period in which the parties could adjust to the new rules prescribed by the Arbitration Award without being subjected to pressures designed to bring about a change in those rules. During the two-year period of adjustment, the Award was to "continue in force" by its own terms, and the



"regular established procedure of collective bargaining," including the service of Section 6 notices and the possibility of a resort to strikes or other self help once the procedures of the Railway Labor Act are exhausted, were in effect supplanted. But the Award was integrated into those procedures, which were to go back into effect upon the expiration of the Award. The Award made a "complete and final disposition" of the 1959 and 1960 Section 6 notices and modified the prior agreements, and such agreements as thus modified continue to apply after the expiration of the Award, although the parties may then resort once again to the procedures of the Railway Labor Act. Thus, the Congress accomplished what it set out to do: to provide a "complete and final disposition" of the original dispute growing out of the old rules, and then, after two years, to remit the parties to "the regular established procedure of collective bargaining" under the Railway Labor Act if changes in the work rules established by the Award should then be appropriate.

*E. The Union's Contention Would Lead to Absurd Results.*

The Congress was fully familiar with the reports by the Presidential Railroad Commission and the Emergency Board demonstrating the need for a revision of the old rules. See, e.g., H. Rept. No. 713, *supra* at 2-3, 8-10; S. Rept. No. 459, *supra* at 4-5. We think it is inconceivable that the Congress, knowing that the old rules had recently been condemned by two impartial government agencies, would nevertheless intend their restoration after only two years. In choosing between such rules and those prescribed by an arbitration board dominated by impartial neutral members, with respect to the period between the expiration of the Award and the adoption of new rules by collective bargaining under the Railway Labor Act, the only logical choice that

the Congress could make is the one it did make—the rules prescribed by or pursuant to the Award.

Moreover, the Congress provided for an arbitration award the provisions of which it knew would be utterly inconsistent with the automatic restoration of the old rules at the end of two years. It realized that the Award likely would result in the elimination of several thousand unneeded assignments—just how many is what the dispute really was all about.<sup>14</sup> And, the Congress expected Board 282 to include in its Award protections for existing employees which, in terms, would extend beyond two years. Such protections had been recommended by the Presidential Railroad Commission and the Emergency Board, and the parties had reached a substantial measure of tentative agreement in that regard. See pp. 6-8, *supra*. Thus, when the Congress provided in Section 3 of P. L. 88-108 that the Board should “incorporate” the parties’ agreements into the Award and give “due consideration” to their “tentative agreements,” it surely contemplated that such protective provisions almost certainly would be included in the Award. That the Congress specifically intended the inclusion of such provisions was made clear during the Senate debate. A proposal to amend the Joint Resolution to require the Board to incorporate such provisions in its Award was withdrawn by its sponsor when the Chairman of the Senate Commerce Committee explained that such a requirement was implicit in the provisions of the Senate bill. 109 Cong. Rec. 15122-15123; see H. Rept. No. 713, *supra* at 8, 9, 12, 23-24, 25-26.

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<sup>14</sup> “It is impossible for those who represent the brotherhoods to go back to their members with any great fruits of victory, because it is inevitable that jobs that are rendered needless and unnecessary because of automation and mechanization must go. And any other course is not consistent with the efficiency, competitive ability, and powers of this country and its free enterprise system.” 109 Cong. Rec. 15057 (Remarks of Senator Cotton). See, *e.g.*, House Hearings, at 183, 804-805; Senate Hearings, at 367, 501, 663, 669-670.

Accordingly, the Board did just what the Congress expected when it authorized the elimination of unneeded positions, subject to comprehensive arrangements for the protection of incumbent employees. The number of firemen employed by the railroads has been reduced by about 18,000 under the Award, in part through the payment of over \$36,000,000 in separation allowances to those employees with limited seniority which the railroads were authorized to separate from employment in that manner.<sup>15</sup> Some 1,200 firemen accepted comparable jobs, with relocation allowance and a five-year guarantee against a reduction in wages, and firemen with more than ten-years seniority were assured

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<sup>15</sup> The assertion by the BLF&E (Brief, at 32) that it was "the clear assumption of the Administration in proposing the legislation and of the public members of the Arbitration Board in making their Award . . . that only some 5,000 or 6,000 firemen would actually be severed," which number was "triple[d]" by the carriers, is without foundation. As the quoted testimony by Assistant Secretary Reynolds (Brief, at 5-6) reveals on its face, he was referring to "the negotiations" preceding the legislation, and, of course, the Administration's bill was not enacted. A reading of the testimony by Mr. Seward, Chairman of Board 282, cited by the BLF&E (Brief, at 5), discloses that "we were guessing" that "in the neighborhood of 6,000" firemen would be severed, but "we were not thinking in terms of the number of jobs that would be eliminated. We were trying to think of the fairest system for procedures for the elimination of jobs, giving protection to different kinds of employees, according to their attachment to industry, length of time they had served and so forth, and endeavoring to work out a set of procedures and rules which we thought would be effective and fair." Hearings before the Senate Committee on Commerce on the Administration of Public-Law 88-108, 89th Cong., 1st Sess. at 364. Moreover, the mere fact that 18,000 jobs have been eliminated does not mean that 18,000 firemen have been severed from employment pursuant to the Award. Assistant Secretary Reynolds estimated that at least half of the number of jobs eliminated (then 17,000) resulted from natural attrition (*id.*, at 466). A table introduced by the Chairman of the National Railway Labor Conference disclosed (*id.*, at 510), that of the 17,250 fireman jobs discontinued under the Award in a 14-month period, only 3,160 resulted from direct severance of firemen from employment and 4,465 were attributable to the severance of firemen who refused offers of comparable jobs. The discontinuance of 8,675 jobs was attributable to natural attrition, including promotion to engineers, and the remaining 950 resulted from the acceptance of comparable jobs.

of engine-service employment unless they retired, were discharged for cause or otherwise were removed from such employment by natural attrition. See p. 7, *supra*.

It is absurd to suppose that the Congress intended to permit the railroads to eliminate thousands of unneeded positions, in part by the payment of millions of dollars in separation pay and relocation allowances and also by the transfer of trained personnel to other occupations, only to be required a few months later to hire new untrained men to fill the very same unnecessary positions. Indeed, obtaining so many new men on March 31, 1966 or some other specific date would be a practical impossibility. That the Congress did not intend such a result we think is plain from our discussion above.

**II All of the Modifications in the Rules Made by or Pursuant to the Award, Including Those Governing the Severance of Firemen from Employment, Continue to Apply.**

While Judge Holtzoff generally was of the view that the "Award and the operations under it created a new status in regard to rules and working conditions," which "status may not be changed . . . except by agreement or by serving notices under Section 6 of the Railway Labor Act . . . and exhausting, step by step, each of the remedies accorded by that statute" (J.A. 223), he also concluded that "neither side may take any further affirmative steps under the Award after its termination date" (J.A. 224). He explained the latter ruling as meaning that "the railroads may not discharge any more firemen pursuant to the provisions of the Award" (*ibid.*), and the judgments accordingly provide (J.A. 232) that "the railroads cannot terminate the employment of firemen (helpers) pursuant to the provisions of Paragraphs C(2), C(3), C(4) or C(6) of Section II of the

Award and cannot offer comparable jobs to firemen (helpers) pursuant to the provisions of Paragraph C(6) of Section II of the Award."

Paragraph C(2) permits firemen "hired on or after a date 2 years prior to the effective date of this Award" to be separated from employment, upon payment of a generous separation allowance (J.A. 110), and Board 282 has ruled that firemen hired after the effective date of the Award come within this category (J.A. 122). Paragraph C(3) permits firemen hired more than two years prior to the effective date of the Award, but who earned less than \$200 during the preceding two years, to be separated upon payment of a separation allowance, subject to a right in such employees to remain as firemen with limited employment rights (J.A. 111, 113). Paragraph C(4) permits the separation of any firemen who did not perform any service as a fireman or engineer during the two years prior to the effective date of the Award (J.A. 111). Paragraph C(6) permits the carriers to offer a comparable job to all other firemen having less than 10 years seniority as of the effective date of the Award, and to separate such a fireman from employment, upon payment of a separation allowance, if he refuses the offer of a comparable job (J.A. 111-112). Paragraph C(7), on the other hand, provides that firemen with 10 years or more of seniority as of the effective date of the Award are entitled to employment in engine service "unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition" (J.A. 113).

All of the provisions in Section II of the Award, including all of Part C thereof, directly modified the prior rules, as is provided in Section II-A. See pp. 17-18, *supra*. Whatever may be the effect of the expiration of the Award, there is no suggestion in P. L. 88-108, in its legislative history, in the

Award or in any judicial decisions of a basis for making a distinction between the various parts of the Award. If the modifications effected by Paragraph C(7) requiring employment in engine service of firemen with more than 10 years seniority continue to apply, as the court below held, we see no reason why the modifications effected by Paragraphs C(2), C(3), C(4) and C(6) authorizing the termination of employment rights in certain circumstances do not also continue to apply. We understand the BLF&E to agree with this analysis (see Brief, at 35-37), although it contends, of course, that none of the modifications (favorable to the carriers) effected by the Award continue and that the old rules are restored in their entirety upon expiration of the Award. We submit, therefore, that this Court should reverse the judgment below insofar as it declares that the carriers cannot, after the expiration of the Award, terminate the employment of firemen, or offer comparable jobs to firemen, under their rules as modified by Sections II-C of the Award.

While this erroneous ruling by the District Court may be of some importance in other situations, it is particularly significant in situations where a so-called "full-crew" law may be rendered inapplicable after the expiration of the Award, as in Oregon which has repealed such a law effective January 1, 1967 (J.A. 130-131). The Award modified the prior rules and agreements in states having "full-crew" laws, as well as elsewhere. As Board 282 expressly determined, for example, the "obligations and rights of the parties with respect to the listing of jobs and the exercise of the veto under Section II . . . of the Award are the same in the so-called 'full crew law states' as in all other states" (J.A. 122). But since P. L. 88-108 did not pre-empt the state laws, if otherwise valid they govern the manning of trains within the state, *Engineers v. Chicago R. & I. P. R.*

*Co.*, 382 U.S. 423 (1966), and thus may prevent effectuation of the rules as modified by the Award (see J.A. 130), just as such laws may frustrate effectuation of rules established by agreement, *Missouri Pacific R. Co. v. Norwood*, 283 U.S. 249 (1931). Once the bar of a state "full-crew" law is removed (by repeal or otherwise), however, the rules agreed upon by the parties as modified by the Award control. If all of the modifications made by the Award continue to apply, as we contend, then the carriers involved would be permitted to separate or offer comparable jobs to employees coming within the categories established by Paragraphs C(2), C(3), C(4) and C(6) in the manner there provided, as well as to discontinue firemen assignments to the extent authorized by Section II-B of the Award.<sup>16</sup>

The BLF&E apparently takes the position (Brief, at 36) that the language by Judge Holtzoff in his opinion that no "affirmative steps" may be taken "under the Award after its termination date," goes beyond a prohibition against separating firemen from employment or the offer of comparable jobs, as provided in the judgments, and in effect prevents the carriers from exercising their rights under the rules as modified by the Award to determine the assignments subject to discontinuance under the Award which are to be made available in order to provide engine service to employees entitled thereto by the Award or otherwise to restrict firemen to their employment rights under the rules as modified by the Award. We do not believe that there is anything to this contention, but we note our view that, for the reasons stated above, any such restriction upon the utiliza-

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<sup>16</sup> In a hearing on the form of its judgments, the District Court construed the judgments as permitting fireman assignments in Oregon, after the repeal of that State's "full-crew" law is effective, to be abolished as the existing firemen are removed from employment by natural attrition (J.A. 213-218). If the judgments as thus construed prevents the abolition of fireman assignments which otherwise is permitted by the rules as modified by the Award, that is in error for the reasons stated in the text.



tion by the carriers of the rules as modified by the Award is erroneous.

### III. The Section 6 Notices Served by the BLF&E Were Premature and Non-Bargainable.

On or about November 15, 1965, the BLF&E served most of the carriers with proposals which, in effect, would eradicate, both retroactively and prospectively, all that has been accomplished under the Award. Although this was done several months prior to the expiration of the Award, the proposals purportedly were served pursuant to Section 6 of the Railway Labor Act. The proposals in form were divided into three separate Section 6 notices, but in fact were so inter-related as to constitute one composite notice. That they were so regarded by the BLF&E is demonstrated by the fact that, in general, they were served at the same time and all were sought to be made effective as of March 31, 1966 (J.A. 132, 144-163), and they were treated as one composite notice by the carriers in their responses thereto (J.A. 134, 164-166).

That part of the proposals identified as "Notice No. 1" in effect would restore the rules governing the use of firemen which existed prior to the Award, requiring that firemen be used, with minor exceptions, "on all locomotives in road and yard service" (J.A. 145-146).<sup>17</sup> That part of the proposals identified as "Notice No. 2" in effect would retroactively wipe out, insofar as is humanly possible, the

<sup>17</sup> The claim by the BFL&E (Brief, at 6) that the proposals in "Notice No. 1" would result in "a reduction of approximately 6,000 positions as compared with those which had been required by the National Diesel Agreement" is without support in the record or in fact. But even if this inflated estimate were accepted, the claimed reductions would be insignificant when compared to the 36,450 employees on the firemen's working lists prior to the Award. See Hearings before the Senate Commerce Committee on the Administration of Public Law 88-108, *supra* at 944. In addition, more than 6,000 firemen were on leave of absence or on furlough. *Ibid.*



application of the Award to individual firemen. The carriers would be required to rehire all of the individuals "whose employment and seniority were terminated by the application or misapplication of the Award," to accord to such individuals the seniority they would have had if they had not been separated pursuant to the Award, to reimburse such individuals "for all monetary losses" sustained as a result of being deprived of their employment and seniority rights pursuant to the Award, and to compensate all firemen retained in employment for any losses (such as moving expenses) resulting from the application of the Award (J.A. 147-149). That part of the proposals identified as "Notice No. 3" in terms would create a program for training apprentice "locomotive enginemen" who, upon successful completion of the program, would be "qualified as a railroad locomotive engineer and . . . receive a seniority date as locomotive engineer" (J.A. 162), but the carriers would be required to use such apprentices as firemen during such training (J.A. 160, 162-163).

The District Court held that all three aspects of the proposals were premature and that the service of such proposals under Section 6 of the Railway Labor Act could not become effective until the day after the expiration of the Award. The District Court also held those aspects of the proposals identified as "Notice No. 1" and "Notice No. 2" to be invalid and non-bargainable at any time, but did not reach this issue as to "Notice No. 3" as it had been removed from the case by stipulation of the parties.<sup>18</sup> We show below that these rulings should be affirmed.

<sup>18</sup> See fn. 5, p. 10, *supra*. The issue as to the validity and bargainability of "Notice No. 3" also involves a dispute between the BLF&E and the Brotherhood of Locomotive Engineers as to which organization is entitled to represent apprentices training to become locomotive engineers and to bargain with the carriers about such an apprentice training program—a dispute which has nothing to do with P.L. 88-108 and the effect of the expiration of the Award. While the parties in their stipulation did not

A. *The Section 6 Notices Were Premature.*

We have demonstrated, from its language and legislative history, that P.L. 88-108 in effect supplanted the "major" dispute provisions of the Railway Labor Act during the two-year period of the Award with respect to matters covered by the Award. The principal purpose and effect of the two-year limit is to subject the parties once again to those provisions of the Railway Labor Act for collective bargaining upon proposed changes in the rules as modified by or pursuant to the Award, which modifications continue to apply until changed in accordance with the Act. See pp. 22-28, *supra*. As was explained by Representative Harris, upon the expiration of the two-year period of the Award, "the issues go back under the regular established procedure of collective bargaining" (109 Cong. Rec. 15279).

Among other things, the Congress thus sought to avoid the possibility, inherent in the rejected bill proposed by the Administration, of being faced with the threat of a railroad strike and a consequent demand for new legislation immediately upon termination of the two-year period of interim I.C.C. regulation proposed in the Administration's bill. See pp. 20-23, *supra*. That purpose would have been frustrated if the parties could serve new Section 6 notices and exhaust the procedures of the Railway Labor Act during the period of the Award, as contended by the BLF&E.

Moreover, the Congress recognized that "the positions on both sides have unfortunately hardened" during the dispute "of extremely long standing" with a consequent breakdown in the effectiveness of the Railway Labor Act procedures. S. Rept. No. 459, *supra* at 8-9. By assuring that any future Section 6 proposals would be reasonably

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expressly include an issue as to the validity and bargainability of "Notice No. 1" (J.A. 139-140), they also did not expressly remove that issue from the case as they did with respect to "Notice No. 3."

related to the findings of the arbitration board and the experience under the Award, the Congress hoped to move the parties from their "hardened" positions so that when normal collective bargaining resumed after the expiration of the Award it could reasonably be expected to be successful rather than lead to the same impasse that necessitated the enactment of P.L. 88-108. Accordingly, Section II-E of the Award (J.A. 114-115) established "a National Joint Board . . . with responsibility for making an intensive and continuing study of the experience in road freight and yard service with and without the employment of firemen (helpers) during the period this Award remains in effect" and to issue a "report based upon its study" within three months of the expiration of the Award. So, too, Section III of the Award (J.A. 115-119) established its own procedure for making changes in rules requiring a stipulated number of trainmen by the application of guidelines specified therein. If the parties could be required to bargain under the Railway Labor Act about proposed changes in fireman (helper) or crew-consist rules before the report of the National Joint Board was available and before the old crew-consist rules had even been changed under the procedures established by the Award, as would have been possible if the position of the BLF&E were correct, the salutary purpose of the Congress to bring about a departure from the "hardened" positions which had developed also could have been easily frustrated.

The contention by the BLF&E (Brief, at 40-41) that the ruling as to the prematurity of its notices is contrary to the "major" dispute provisions of the Railway Labor Act conveniently ignores the existence of P.L. 88-108 and the Award thereunder which, as we have shown, supplanted those provisions during the period of the Award. The legislative history of P.L. 88-108 referred to by the BLF&E

(Brief, at 43), to the extent that it is at all relevant, relates to the Administration's bill, under which the 1959 and 1960 Section 6 notices would have remained outstanding during the period of interim I.C.C. regulation. See pp. 20-21, *supra*. That bill provided, among other things, that the I.C.C. rules would "be operative only . . . until the current controversy . . . is resolved by the parties through continued collective bargaining; and no provision in this joint resolution shall be construed as limiting the right and responsibility of the carriers to reach agreement" disposing of the controversy created by the 1959 and 1960 notices. House Hearings, at 1. Public Law 88-108 does not contain a comparable provision, however, and the Congress provided therein for "a complete and final disposition" of the 1959 and 1960 Section 6 notices as they related to the fireman (helper) and crew-consist issues. See p. 22, *supra*. The legislative history relied upon by the BLF&E, consequently, is not directed to the issue before the Court under the legislation which was enacted.

We do not contend, of course, that the carriers and unions were prohibited from engaging in voluntary efforts during the period of the Award to reach some agreement about fireman (helper) and crew-consist rules. Indeed, by voluntary agreement they could have displaced the Award either in part or altogether at any time. See H. Rept. No. 713, *supra* at 13. But while the parties could engage in collective bargaining on a voluntary basis, they could not during the period of the Award be subjected to the "major" dispute procedures of the Railway Labor Act so as to be forced to negotiate under the threat of an ultimate resort to a strike or other self help in the event those procedures were exhausted without an agreement being reached. We submit, therefore, that the court below correctly held that the Section 6 notices served during the period of the Award

were premature and did not become effective under the Railway Labor Act until the day after the expiration of the Award.

*B. Those Aspects of the Proposals Identified as "Notice No. 1" and "Notice No. 2" Are Invalid and Non-Bargainable.*

While Section 6 of the Railway Labor Act provides for the service of thirty-days written notice "of an intended change in agreements affecting rates of pay, rules, or working conditions," and for bargaining thereon in conferences and mediation proceedings, not every proposal which purports to be served under Section 6 gives rise to a duty to bargain. The proposal must be limited to those future changes in "rates of pay, rules, or working conditions" to which Section 6 applies.<sup>19</sup> For example, a carrier is not required to bargain about the closing of a railroad yard, *Brotherhood of Rail. Train. v. New York Central R. Co.*, *supra*, or about the installation of new machinery, *Norfolk & P. B. L. R. Co. v. Brotherhood of Rail. Train.*, 248 F. 2d 34, 42 (4th Cir., 1957). So, too, the "rates of pay, rules, or working conditions" about which a carrier may be required to bargain must relate to "the future alone," and not to proposed retroactive remedies for past grievances. *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711, 739-740 (1945). And, a carrier's duty to bargain with a union is limited to the "rates of pay, rules, or working conditions" of em-

<sup>19</sup> *Chicago & North Western Ry. Co. v. Order of Rail. Tel.*, 264 F. 2d 254, 258-260 (7th Cir., 1959), *rev'd* on other grounds, 362 U.S. 330 (1960); *Brotherhood of Rail. Train. v. New York Central R. Co.*, 248 F. 2d 114 (6th Cir., 1957); *cf.*, *Fibreboard Corp. v. Labor Board*, 379 U.S. 203, 209-210 (1964); *Labor Board v. Borg-Warner Corp.*, 356 U.S. 342 (1958). As the *Fibreboard* and *Borg-Warner* cases demonstrate, a similar distinction is made under the Labor-Management Relations Act. See, also, *Elgin J. & E. Ry. Co. v. Brotherhood of Railroad Trainmen*, 302 F. 2d 540, 543-544 (7th Cir., 1962).

ployees represented by the union, and does not extend to matters affecting former employees. See *Elgin, J. & E. Ry. Co. v. Brotherhood of Railroad Trainmen*, 196 F. Supp. 158, 164 (N.D. Ill., 1961), *aff'd*, 302 F. 2d 540 (7th Cir., 1962).<sup>20</sup>

We think it obvious that those aspects of the proposals identified as "Notice No. 2" do not relate to future "rates of pay, rules, or working conditions" within the meaning of Section 6 of the Railway Labor Act. The proposal that the individuals separated from employment pursuant to the Award be rehired with the seniority they would have had if they had not been discharged concerns specific individuals who no longer are employees represented by the BLF&E, and does not concern either "rates of pay," "rules," or "working conditions" within any normal meaning of those terms. And, the proposals to compensate both the individuals discharged pursuant to the Award and those retained in employment as firemen for various losses allegedly incurred as a result of applications of the Award would impose a retroactive remedy for past grievances rather than establish "rates of pay, rules, or working conditions" applicable in the future.

We noted, at p. 35, *supra*, that the proposals served by the BLF&E constitute one composite Section 6 notice, even though purporting in form to be divided into three notices. Hence, the non-bargainability of those aspects of the pro-

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<sup>20</sup> *Telegraphers v. Chicago & N.W. R. Co.*, 362 U.S. 330 (1960), upon which the BLF&E relies (Brief, at 41), is not contrary to any of these propositions and does not in any way indicate that the proposals in issue here are valid and bargainable. The Section 6 notices involved in that case proposed only to prohibit the carrier from abolishing positions of employees represented by the union, after a specified future date, except by agreement with the union. *Id.*, at 332. Thus, the proposal concerned the future "permanency of employment" of employees represented by the union, *id.* at 336, unlike any of the proposals involved here. And, of course, P.L. 88-108 and the Award was not in any way involved in that case. See p. 44, *infra*.

posals identified as "Notice No. 2" infects the other aspects of the proposals as well. But there is an even more fundamental reason why neither "Notice No. 1" nor "Notice No. 2" is valid and bargainable under the Railway Labor Act. Under that Act, it is the "duty of all carriers, their officers, agents, and employees to exert *every reasonable effort* to make and maintain agreements concerning, rates of pay, rules, and working conditions . . . ." 45 U.S.C. § 152 First (emphasis added). This requirement reflects the purpose of the Railway Labor Act to "induce agreement," *Elgin, J. & E. R. Co. v. Burley*, *supra* at 725, and thus to prevent rather than to encourage strikes.<sup>21</sup> Hence, in order to exhaust the "major" dispute procedures of the Act, the union must make a "good faith" effort to reach agreement.<sup>22</sup> "To effectuate the purposes of the Act and to prevent a mockery of its requirements such efforts must be reasonable and made in good faith and not simply to satisfy perfunctory compliance. Empty motions and hollow gestures are not sufficient." *Long Island Rail Road Co. v. Brotherhood of Rail. Train.*, 185 F. Supp. 356, 358 (E.D. N.Y., 1960).

We think it apparent from their face that the proposals

<sup>21</sup> "The Brotherhood insists, and we think rightly, that the major purpose of Congress in passing the Railway Labor Act was 'to provide a machinery to prevent strikes.'" *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U.S. 548, 565 (1930).

<sup>22</sup> E.g., *Elgin, J. & E. R. Co. v. Burley*, *supra* at 721-722, fn. 12; *Pan American World Air v. Flight Eng. Intern. Assoc.*, 306 F.2d 840, 849 (2d Cir., 1962); *Norfolk & P.B.L. R. Co. v. Brotherhood of Rail. Train.*, *supra* at 45, fn. 6; *Brotherhood, Etc. v. Atlantic Coast Line R. Co.*, 201 F.2d 36, 39 (4th Cir., 1953); *Chicago, Rock Island & Pac. R. Co. v. Switchmen's Union*, 187 F. Supp. 581, 583-584 (W.D. N.Y., 1960), *rev'd* on other grounds, 292 F.2d 61, 67-70 (2d Cir., 1961); *Northwest Airlines, Inc. v. Airline Pilots Association*, 185 F. Supp. 77, 79-80 (D. Minn., 1960); *American Airlines, Inc. v. Air Line Pilots Ass'n, Inter.*, 169 F. Supp. 777, 793-798 (S.D. N.Y., 1958).



made by the BLF&E do not constitute a good faith effort to bring about an agreement, but rather represent an effort to obtain a license to strike as quickly as possible through "perfunctory compliance" with the requirements of the Railway Labor Act. Not only were they served well prior to the expiration of the Award, but those proposals also totally disregard the findings by the Presidential Railroad Commission that firemen are not needed except in "unique" situations, the findings by Board 282 that a provision whereby the BLF&E could require the use of firemen on up to ten percent of all assignments would provide a "sufficient margin of error" to assure that all of those unique situations where firemen may be needed would be covered, and the findings of the National Joint Board that application of the Award had not adversely affected work loads or the safety or efficiency of operations.<sup>23</sup> See pp. 3-4, 6, 8, *supra*. The proposals by the BLF&E would return the parties to the "hardened positions" which led to the breakdown of the procedures of the Railway Labor Act necessitating the enactment of P.L. 88-108, insofar as the future use of firemen is concerned, and would undo retroactively all that was accomplished under the Award so as in effect to repeal P.L. 88-108. No reasonable person could expect that such proposals would or should be accepted by the carriers in whole or in significant part. They can be nothing other than the commencement of an attempt by the BLF&E to put it-

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<sup>23</sup> In *Labor Board v. Truitt Mfg. Co.*, 351 U.S. 149 (1956), the Supreme Court held that an employer did not bargain in good faith where it refused to substantiate a claim that it was unable to pay higher wages. "Good faith bargaining necessarily requires that claims made by either bargainer should be honest claims." *Id.*, at 152. The claim by the BLF&E that firemen are needed on almost all locomotives obviously is not an "honest claim" which could be substantiated, in view of the findings by the Presidential Railroad Commission, Board 282, the Joint Board and other governmental agencies which have investigated the matter within recent years.



self into a position to strike as quickly as possible by going through the forms required by the Railway Labor Act while ignoring the substance of that Act.

In short, we do not believe that the carriers have a duty to bargain about the proposals identified as "Notice No. 1" and "Notice No. 2" even if the Railway Labor Act is considered alone. Moreover, that Act does not stand alone. Even if the proposals could somehow be said to relate to a good faith effort to reach agreement upon future changes in "rates of pay, rules, or working conditions" insofar as Section 6 of the Railway Labor Act is concerned, P.L. 88-108 also must be considered. To suggest that the Congress intended the carriers to be required to bargain over proposals which in effect would nullify all that has been accomplished under P.L. 88-108, both retroactively and prospectively, and to be subjected to a strike if they did not agree to such proposals, would be an absurdity.<sup>24</sup> As we have shown, pp. 37-38, *supra*, the Congress intended the Award to constitute a "complete and final disposition" of the dispute created by the 1959 and 1960 Section 6 notices, and to remit the parties after two years to bargaining under the Railway Labor Act upon the basis of the rules as modified by the Award rather than upon the basis of the "hardened positions" which frustrated agreement prior to the enactment of P.L. 88-108. The BLF&E not only has reasserted its previous position that firemen are needed on almost all locomotives, but also seeks to avoid the binding effect of the Award, even for the period prior to its expiration.

We submit, therefore, that the court below correctly held that the carriers are not required to bargain about

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<sup>24</sup> We note that "bargaining from a legally erroneous premise" may constitute a failure to bargain in good faith. *Norfolk & P.B.L. R. Co. v. Brotherhood of Rail. Train.*, *supra* at 45, fn. 6.

the proposals identified as "Notice No. 1" and "Notice No. 2." The BLF&E suggests (Brief, at 39), however, that the lower court has proscribed "*any* proposal by the BLF&E for manning conditions more favorable to firemen than those dictated by the Award . . . ." But Judge Holtzoff expressly recognized in his opinion (J.A. 223, 225, 226) and in his judgments (J.A. 233) that, as stated in the latter, the modifications in the old rules made by or pursuant to the Award create a status which continues only "until changed by agreement or until the procedures of the Railway Labor Act . . . have been exhausted with respect to valid notices served under Section 6 of that Act . . . proposing changes in the status thus created." The proposals identified as "Notice No. 1" and "Notice No. 2" were held to be invalid and non-bargainable, but Judge Holtzoff did not purport to rule upon the validity or bargainability of other proposals which had been or might be made by the BLF&E (J.A. 226-228, 234-235). We do not understand Judge Holtzoff to have concluded, even in *dicta*, that every proposal to change the rules as modified by the Award would be invalid and non-bargainable under Section 6 of the Railway Labor Act. But, however that may be, the judgments do not so provide and the carriers, do not so contend. We do contend, for the reasons stated above, that the judgments correctly held that the proposals identified as "Notice No. 1" and "Notice No. 2" are invalid and non-bargainable.

#### **IV. The Norris-LaGuardia Act Is Inapplicable.**

In general, the judgments enjoined the BLF&E from striking over the continued application by the carriers of their rules as modified by or pursuant to the Award until such rules are changed by agreement or the procedures of the Railway Labor Act have been exhausted with respect to valid proposals under Section 6 to change such rules (J.A. 235-236). The BLF&E contends (Brief, at 44) that

the District Court lacked jurisdiction to grant this or any other injunctive relief by reason of the Norris-LaGuardia Act (47 Stat. 70, 29 U.S.C. §§ 101-113) in general and Section 8 thereof (29 U.S.C. § 108) in particular. This contention was properly rejected by the court below.

If we are correct in our understanding that the rules as modified by or pursuant to the Award continue to apply until changed after the expiration of the Award in accordance with the procedures of the Railway Labor Act, a strike by the BLF&E in the circumstances to which the judgments apply would be in violation of the Railway Labor Act. We do not believe that there is any dispute about this proposition. As this Court commented, after a review of the provisions and legislative history of the Railway Labor Act:

“The legislation dealing with the relations between railroads and their employees shows congressional concern with the vital need to avoid work stoppages in the nation’s transportation system. Congress clearly contemplated that the contending parties should have time to evolve an amicable settlement while a railroad continues to operate; Congress recognizes the right to strike, ‘but postpones such action until the successive procedures set up by the act have been exhausted.’ ”

*Brotherhood of Railway Etc. v. Railroad Retire. Bd.*, 99 U.S. App. D. C. 217, 239 F. 2d 37, 41 (1956).

The issue, then, is whether the Norris-LaGuardia Act deprives the courts of jurisdiction to enjoin a strike which otherwise would be enjoinable because in violation of the Railway Labor Act. That Norris-LaGuardia was not intended to deprive the courts of jurisdiction in such circumstances is clear from the legislative history of that Act. Representative LaGuardia expressly disclaimed any

intent to have that Act apply to disputes coming under the Railway Labor Act, as, for example, in the following colloquy (75 Cong. Rec. 5499):

"Mr. LANKFORD of Virginia. \* \* \* Will the gentleman answer this question? Does this make it possible for lack of an injunction to tie up railroads and prevent them from transporting milk, for example?

"Mr. LaGUARDIA. I think the gentleman was a Member of the House in 1926?

"Mr. LANKFORD. No.

"Mr. LaGUARDIA. We then passed the railroad labor act, and that takes care of the whole labor situation pertaining to railroads. They could not possibly come under this for reason that we provided the machinery there for settling labor disputes."

The pertinent legislative history of Norris-LaGuardia has been summarized by the Supreme Court as follows:

"The Norris-LaGuardia Act . . . was designed primarily to protect working men in the exercise of organized economic power, which is vital to collective bargaining. The Act aimed to correct existing abuses of the injunctive remedy in labor disputes. Federal courts had been drawn into the field in the guise either of enforcing federal statutes, principally the Sherman Act, or through diversity of citizenship jurisdiction. In the latter cases, the courts employed principles of federal law frequently at variance with the concepts of labor law in the States where they sat. Congress acted to prevent the injunctions of the federal courts from upsetting the natural interplay of the competing forces of labor and capital. Rep. LaGuardia, during the floor debates on the 1932 Act, recognized that the machinery of the Railway Labor Act channeled those

economic forces, in matters dealing with railway labor, into special processes intended to compromise them. Such controversies, therefore, are not the same as those in which the injunction strips labor of its primary weapon without substituting any reasonable alternative."

*Trainmen v. Chicago, R. & I. R. Co.*, 353 U.S. 30, 40-41 (1957).

The Supreme Court has consistently held, consequently, "that the Norris-LaGuardia Act does not deprive federal courts of jurisdiction to compel compliance with the mandates of the Railway Labor Act." *Textile Workers v. Lincoln Mills*, 353 U.S. 448,, 458 (1957). Thus, the Court has expressly held that Norris-LaGuardia does not bar an injunction prohibiting a carrier from violating its duty to bargain with the certified bargaining agent of its employees (and with no other union), *Virginian Ry. v. Federation*, 300 U.S. 515, 563 (1937), or an injunction prohibiting a union from violating its duty to represent all employees in the bargaining unit in a non-discriminatory manner, *Graham v. Brotherhood of Firemen*, 338 U.S. 232, 237-240 (1949). After a comprehensive review of the relevant legislative history and its prior decisions, the Supreme Court held, in *Trainmen v. Chicago, R. & I. R. Co.*, *supra*, that Norris-LaGuardia did not apply to an injunction against a strike over a "minor" dispute in view of Section 3 of the Railway Labor Act (45 U.S.C. § 153) which provides for submission of such disputes to the National Railroad Adjustment Board. This was regarded as "a clear situation for the application" of the "principle" established in the Court's earlier decisions that "the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act." 353 U.S., at 41-42. In *Locomotive Engrs. v. L. & N. R. Co.*,

373 U.S. 33, 42 (1963), the Court further applied the same principle to hold that the Norris-LaGuardia Act did not prevent an injunction against a strike over an award by the National Railroad Adjustment Board in settlement of a "minor" dispute.

While the Supreme Court has not had occasion to decide the issue, we submit that a threatened strike over a "major" dispute—an intended change in rates of pay, rules or working conditions—prior to the service of valid Section 6 notices or to the exhaustion of the conferences, mediation and other procedures specified by the Railway Labor Act with respect thereto—also presents a "clear situation" for the application of the principle that "the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act." The lower courts have consistently held the Norris-LaGuardia does not bar an injunction against a strike in such circumstances. *Norfolk & P. B. L. R. Co. v. Brotherhood of Rail. Train.*, *supra* at 45-46 (alternative holding); *Pennsylvania Railroad Co. v. Transport Wkrs. Union*, 202 F. Supp. 134, 137 (E.D. Pa., 1962); *Western Air Lines v. Flight Engineers Internat'l Ass'n*, 194 F. Supp. 908, 910-911 (S.D. Cal., 1961); *Pennsylvania Railroad Co. v. Transport Workers Union*, 191 F. Supp. 915, 921 (E.D. Pa., 1960), *aff'd*, 280 F. 2d 343 (3d Cir., 1960); *Chicago, Rock Island & Pac. R. Co. v. Switchmen's Union*, *supra*, 187 F. Supp. at 584; *American Airlines, Inc. v. Air Lines Pilots Ass'n Inter.*, *supra* at 783-789.<sup>25</sup>

<sup>25</sup> Many other cases have stated in *dicta* that Norris-LaGuardia is inapplicable in such circumstances. *E.g.*, *Eastern Air Lines, Inc. v. Flight Engineers International Ass'n*, 340 F. 2d 104, 106 (5th Cir., 1965); *Missouri-Illinois R. Co. v. Order of Railway Conductors*, 322 F. 2d 793, 796 (8th Cir., 1963); *Pan American World Air. v. Flight Eng. Inter. Assoc.*, *supra* at 846; *Chicago River & Indiana R. Co. v. Brotherhood of Rail. T.*, 229 F. 2d 926, 930-931 (7th Cir., 1956), *aff'd*, 353 U.S. 30 (1957). And, the courts have held that in the converse situation, where a carrier has not

Section 4 of Norris-LaGuardia deprives the federal courts of jurisdiction to issue an injunction against certain "acts" arising out of labor disputes, including "[c]easing or refusing to perform any work or to remain in any relation of employment;" i.e., a strike. With respect to other acts or circumstances arising out of a labor dispute, an injunction may be issued only if certain procedural requirements imposed by Sections 7, 8 and 9 (29 U.S.C. §§ 107, 108, 109) are satisfied.<sup>26</sup> The BLF&E contends that Section 8 is applicable to the injunctive relief granted below, even if the other provisions of Norris-LaGuardia—including the flat prohibition in Section 4 against enjoining strikes—are not.<sup>27</sup> But there is no basis in the language or legislative history of Norris-LaGuardia for distinguishing between the various provisions of the Act insofar as injunctions against strikes in violation of the Railway Labor Act are concerned, and no such distinction is made in the cases.

In *Graham v. Brotherhood of Firemen*, *supra*, for example, the BLF&E argued that an injunction was improper

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exhausted the procedures of the Railway Labor Act with respect to a major dispute, Norris-LaGuardia does not prevent the issuance of an injunction against the carrier. *Southern Ry. Co. v. Brotherhood of Locomotive Firemen, Etc.*, 119 U.S. App. D.C. 91, 337 F. 2d 127, 132-133 (1964); *Manning v. American Airlines, Inc.*, 329 F. 2d 32 (2d Cir., 1964); *Railroad Yardmasters v. Pennsylvania Railroad Co.*, 224 F. 2d 226, 228 (3d Cir., 1955).

<sup>26</sup> Section 7 requires findings of fact to be made by the trial court as to a number of specified matters, after hearing the testimony of witnesses in open court. Section 8 requires complainants to comply with obligations imposed by law and to make every reasonable effort to settle the dispute, before injunctive relief is granted. Section 9 requires the trial court to make and file its findings of fact prior to issuance of an injunction and to limit the injunction to a prohibition of specific acts alleged in the complaint and found by the court in its findings of fact to have occurred.

<sup>27</sup> Since Judge Holtzoff held Section 8, as well as the other provisions of Norris-LaGuardia, to be inapplicable as a matter of law, he did not reach the issue of whether the carriers in fact had complied with Section 8. The parties stipulated below that the facts relevant to that issue would be developed in a later hearing if Section 8 were held to be applicable as a matter of law (J.A. 139-140).



under Sections 7 and 8, even if not prohibited by Section 4, as follows:<sup>28</sup>

“But even if we assume that the Norris-LaGuardia Act did not intend to prohibit injunctions in all cases of labor disputes not involving violence, the petitioners’ argument is unsound. . . . Section 7 requires also that before an injunction can issue specific allegations of illegal conduct must be proven in open court subject to cross-examination; Section 7(c) requires allegation and proof that the damage to complainant if an injunction is denied will be greater than the damage to defendant if an injunction issues; Section 8 requires proof that all efforts at negotiations have been exhausted. Not only was there no hearing at which any of these things were proven, but they were not even alleged. These provisions are clearly applicable to this situation, and until at least they are complied with the Norris-LaGuardia Act prohibits an injunction.”

The Supreme Court held Norris-LaGuardia to be inapplicable, without attempting to distinguish among its various provisions, and upheld the issuance of an injunction against violations of the Railway Labor Act. 338 U.S., at 237-240.

Most of the other cases also simply reject the applicability of Norris-LaGuardia as a whole, without expressly considering whether some distinction should be made among its various provisions, but a number of cases have expressly rejected contentions that one or more of the procedural provisions of Norris-LaGuardia are applicable to injunctions against violations of the Railway Labor Act. The earliest decision by the Supreme Court in this area, for example, expressly rejected a contention that Section 9 of Norris-LaGuardia applied in such circumstances. *Virginian Ry.*

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<sup>28</sup> Brief for Respondent in the Supreme Court, at 16-17.



v. *Federation*, *supra* at 562-563. The applicability of Section 7 also has been rejected. *Missouri-Kansas-Texas R. Co. v. Brotherhood of Loc. Eng.*, 266 F.2d 335, 339-340 (5th Cir., 1959), *rev'd* on other grounds, 363 U.S. 528 (1960); *cf.*, *Textile Workers v. Lincoln Mills*, *supra* at 457-459 (in which the Supreme Court applied principles developed in cases involving the Railway Labor Act to an injunction against violation of the Labor Management Relations Act). Finally, in *Brotherhood of Railroad Train. v. Denver & R. C. W. R. Co.*, 290 F.2d 266, 270 (10th Cir., 1961), it was specifically held that Section 8 is inapplicable, as follows:

"It is urged that the injunction entered in this case is prohibited by Section 8 of the Norris-LaGuardia Act. . . . We think the question was answered in the case of *Brotherhood of Railroad Trainmen v. Chicago River & I. R.R.*, [353 U.S. 30], in which it was held that the general terms of the Norris-LaGuardia Act could not be read alone in matters dealing with railway labor disputes, and that it did not prevent injunctions to prohibit strikes growing out of minor disputes which were specifically dealt with in the Railway Labor Act."

See, also, *Chicago & Illinois Midland Ry. Co. v. Brotherhood of Rail. Tr.*, 315 F.2d 771, 775 (7th Cir., 1963), *vacated as moot*, 375 U.S. 18 (1963).

*Telegraphers v. Chicago & N.W. R. Co.*, 362 U.S. 330 (1960), and *Trainmen v. Toledo, P. & W. R. Co.*, 321 U.S. 50 (1944), relied upon by the BLF&E, are not contrary to the principles stated above. In both of those cases, the "major" dispute procedures of the Railway Labor Act had been exhausted (see 362 U.S., at 349-351; 321 U.S., at 51-52).<sup>29</sup>

<sup>29</sup> This is also true of the lower-court cases cited by the Order of Railway Conductors and Brakemen (Brief in No. 20,158, at 43-44) in a companion case. None of the unions involved in the cases arising out of the expiration of the Award has cited a single case in which Norris-LaGuardia was held

Insofar as "major" disputes are concerned, the "parties are required [by the Railway Labor Act] to submit to the successive procedures designed to induce agreement," but "compulsions go only to insure that those procedures are exhausted before resort can be had to self help." *Elgin, J. & E. R. Co. v. Burley*, *supra* at 725. Those procedures are exhausted 30 days after the National Mediation Board formally terminates its services (45 U.S.C. § 155 First), unless the President in his discretion appoints an emergency board, in which event the procedures are exhausted 30 days after the emergency board reports to the President (45 U.S.C. § 160). The parties then are free to resort to self help, including a strike, without violating the Railway Labor Act. *Locomotive Engineers v. B. & O. R. Co.*, 372 U.S. 284, 290-291 (1963). In such circumstances the principle "that the Norris-LaGuardia Act does not deprive federal courts of jurisdiction to compel compliance with the mandates of the Railway Labor Act" (p. 46, *supra*), is inapplicable since no violation of the mandates of the Railway Labor Act is involved. *Missouri-Illinois R. Co. v. Order of Railway Conductors*, *supra* at 798; *Pullman Co. v. Order of Railway Conductors & Brakemen*, 316 F. 2d 556, 564 (7th Cir., 1963); *American Airlines, Inc. v. Air Line Pilots Ass'n*, *supra* at 787.<sup>20</sup>

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to apply, either in whole or in part, to an injunction against striking over a "major" dispute prior to the exhaustion of the procedures of the Railway Labor Act.

<sup>20</sup> Since the BLF&E has expressly waived its contention that Judge Holtzoff should have disqualified himself for bias and prejudice insofar as the issues involved in these appeals are concerned (Brief, at 44-45), we will not burden the Court with our reasons for believing that no error was committed in that regard, but we note our belief that the waiver necessarily extends to all issues that have been or may be decided by Judge Holtzoff in the proceedings below, insofar as the grounds alleged in the motion to disqualify are concerned.

### Conclusion

For the foregoing reasons, the judgments below should be affirmed except insofar as they determine that some of the modifications in the prior rules made by or pursuant to the Award, such as the modifications authorizing the separation of certain firemen from employment, do not continue to apply after the expiration of the Award until changed in accordance with the Railway Labor Act.

Respectfully submitted,

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## APPENDIX A

*Railway Labor Act (44 Stat. 577, as amended, 45 U.S.C.  
§ 151 et seq.)*

*Section 2, 45 U.S.C. § 152:*

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

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Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

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*Section 5, 45 U.S.C. § 155:*

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

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*Section 6, 45 U.S.C. § 156:*

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay,

rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

*Section 7, 45 U.S.C. § 157:*

First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, as the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representatives as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation



Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to



a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

*Section 8, 45 U.S.C. §158:*

The agreement to arbitrate—

- (a) Shall be in writing;
- (b) Shall stipulate that the arbitration is had under the provisions of this Act;
- (c) Shall state whether the board of arbitration is to consist of three or of six members;
- (d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;
- (e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to

decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same

district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

*Section 10, 45 U.S.C. §160:*

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling

expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

**APPENDIX B****Excerpts From Testimony by Secretary of Labor Wirtz in the Committee Hearings on S. J. Res. 102 or H. J. Res. 565***Senate Hearings:*

SENATOR MONRONEY. Or failing in that, one or the other side seeking finality to this dispute would then go voluntarily to the ICC and put this suggested procedure for determination for the 2-year interim period into operation. Following the 2 years all bets are off. Is that correct?

SECRETARY WIRTZ. No, not all bets are off.

First, as you make it clear, it is 2 years after—there are two 2-year periods in here. One is for the effectiveness of this joint resolution. Another is for the effectiveness of a particular rule. And we are talking about the second one.

It would go on for 2 years unless they reached agreement.

But there is the contemplation here that this situation would be reviewed by the President at the end of the 2-year period, and I assume; that is, the first 2-year period—and I assume that he, on the basis of further report to the Congress, if that is necessary—well, they would simply consider the situation as it stood at that point. I don't think there is the intention of shutting off all responsibility on an all-bets-off basis.

SENATOR MONRONEY. Does this procedure vary from the no-strike cooling off period type of legislation, that is, this determination on application of one or the other of the disputants by the Interstate Commerce Commission of temporary rules, or settlements that will obtain for the 2-year period, subject to extension by the President or by the Congress, or whatever happens at the end of the 2 years if collective bargaining has not resolved the issues before that time?

SECRETARY WIRTZ. That is right. (Page 54)

• • • • •

SENATOR COTTON. At the expiration of the 2-year period the President reports to the Congress—it is mandatory in this act, he shall report to the Congress—

SECRETARY WIRTZ. Yes.

SENATOR COTTON. Prior to the expiration?

SECRETARY WIRTZ. I would assume so, yes.

SENATOR COTTON. And if no satisfactory solution, permanent solution, has been reached, the President has said, and it is not unlikely, that the President would seek a continuance. Isn't that a logical probability?

SECRETARY WIRTZ. I think it is very, very likely, approaching the point of strong probability, that this matter will be settled by the parties within the 2-year period.

SENATOR COTTON. But that is not my question. I differ with you necessarily on that. My question is assuming it is not settled.

SECRETARY WIRTZ. That it doesn't happen?

SENATOR COTTON. And if at the end of 2 years we find ourselves exactly in the position, or essentially in the position we are today, isn't there a strong likelihood the President would recommend an extension, not necessarily for 2 years but an extension of time of this period?

SECRETARY WIRTZ. If the situation were exactly the same as it is now, there would be no choice, I would think as a practical matter, about the answer to that question. . . . (Pages 55-56)

\* \* \* \* \*

SENATOR SCOTT. Pursuing earlier questions, inspection of the various time periods allowed here would seem to bring the expiration of this resolution somewhere into the fall—somewhere in the area of the fall of 1965, late summer or fall. What would happen if the Congress is not in session at the end of that period and the President is due to make a report. How would that be dealt with.

SECRETARY WIRTZ. I don't think that the prospect is a real one. But if the circumstances warranted, I suppose

that there would be consideration of whether it warranted a special session of the Congress or something of that sort. (Page 61)

•        •        •        •        •

SENATOR MCGEE. What happens, again for the record, to an interim rule that expires without any negotiated rule having been made during the 2-year life?

SECRETARY WIRTZ. And no renewal of the resolution?

SENATOR MCGEE. Yes.

SECRETARY WIRTZ. It would mean that section 6 notices now in effect would still be standing and that there would be a right of either party to take whatever course of action it wanted at that time. (Page 81)

#### *House Hearings:*

MR. ROGERS of Texas. At the end of the 2-year period, Mr. Secretary, if we assume that these two issues, crew consist and the fireman matter, have not been settled, do you anticipate a request for an extension of the authority proposed in this resolution?

SECRETARY WIRTZ. If nothing has happened at the end of that period. Incidentally, this would be the period after which the rule has been operative for 2 years—the interim rule—if we reached that point we would face exactly the same situation we do here. May I take one moment to say that this would be the first industry, this would be the first pair of parties in the history of collective bargaining in this country in which it had been impossible to reach that agreement. In spite of my respect for Mr. Staggers' and Mr. Springer's reaction to this case, I don't rate it that way. I think these parties will in this period for very strong self-interest reasons work it out. I don't mean to fuzzy up my answer to your question. If I am wrong that 4 years from now they are apart, the answer would be that we would be back here. I would hope not. (Pages 59-60)

•        •        •        •        •



MR. GLENN. On page 6 of the bill down at the bottom of the page, it mentions that the President can extend his recommendation to the Congress for an extension of a resolution after the end of the 2-year period.

SECRETARY WIRTZ. That is correct.

MR. GLENN. So, in effect, we are then working under the interim rules and they could be extended by another resolution, could they not?

SECRETARY WIRTZ. There would be that possibility.

MR. GLENN. If we have that possibility then it is possible that this could continue indefinitely as a way of life so that these interim rules could, in effect, be permanent rules, is that not so?

SECRETARY WIRTZ. As a matter of logic or as a matter of practical prospect. As a matter of logic; yes, sir. (Page 64)

. . . . .

MR. NELSEN. One more question. If this dispute is tossed to the ICC, and it has been implied at the end of a 2-year period by attrition the group involved will be much less. That is on the assumption that the ICC adopts the rules of the Presidential Commission.

Suppose the ICC does not agree with the work rules that have been composed in these commissions, then at the end of a 2-year period, then what happens?

SECRETARY WIRTZ. The situation would require, again if we assume that the parties have fallen on their faces for another 2 to 4 years, which I am not willing to assume, then we face the necessity of doing something more about it here.

I just don't think there will be that failure of collective bargaining. But if there is—

MR. NELSEN. I appreciate your optimism. I hope you are right. (Page 65)

. . . . .

MR. ROGERS of Florida. . . . . Now I understand that in the 2 years the ICC would have the right to settle the dis-



agreements, allowing the parties to try to continue to get an agreement on these points of difference.

SECRETARY WIRTZ. Yes. Your question refers, I think, to the manning issues and to the standard procedures.

MR. ROGERS of Florida. Yes.

SECRETARY WIRTZ. There would be not just the right but the obligation to issue interim orders.

MR. ROGERS of Florida. At the end of a 2-year period, is a strike allowed?

SECRETARY WIRTZ. This would be 2 years after the order had become operative, and if there is no other action taken the answer would be "Yes."

MR. ROGERS of Florida. So a strike could come about 2 years after the order had been operative?

SECRETARY WIRTZ. It could. (Page 69)

MR. DEVINE. I think I know the answers to this, but I think it should be made clear in the record. Say all of the gymnastics provided in this bill are gone through and the procedures are followed and the Interstate Commerce Commission makes recommendations, and let us say the brotherhoods in this instance would not agree to go along with the recommendations.

Would they then be free to strike?

SECRETARY WIRTZ. After the interim rule had been in effect for the 2-year period, then assuming there is no agreement, the situation would be that they would be at that point unless there was further action taken by the Congress. (Page 107)

In the  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, )

Appellant, )

v. )

Nos. 20,192 and 20,193

BANGOR AND AROOSTOOK RAILROAD COMPANY, et al., )

and )

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, et al., )

Appellees. )

BANGOR AND AROOSTOOK RAILROAD COMPANY, et al., )

and )

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, et al., )

Appellants, )

v. )

Nos. 20,215 and 20,216

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, )

Appellee. )

PETITION FOR REHEARING, REQUEST FOR SUPPLEMENTAL  
RULINGS AND PROPOSED JUDGMENT BY APPELLEES IN  
NOS. 20,192 and 20,193 AND BY APPELLANTS IN NOS.  
20,215 AND 20,216

United States Court of Appeals  
for the District of Columbia Circuit

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In the  
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BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,

Appellant,

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BANGOR AND AROOSTOOK RAILROAD COMPANY, et al.,

Appellees.

No. 20,192

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,

Appellant,

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Appellees.

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BANGOR AND AROOSTOOK RAILROAD COMPANY, et al.,

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No. 20,215

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, et al.,

Appellants,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,

Appellee.

No. 20,216

PETITION FOR REHEARING, REQUEST FOR SUPPLEMENTAL RUL-  
INGS AND PROPOSED JUDGMENT BY APPELLEES IN NOS.  
20,192 and 20,193 AND BY APPELLANTS IN NOS.  
20,215 AND 20,216

On May 12, 1967, this Court issued its Opinion in the above-captioned

cases, in Nos. 20,152, 20,172, 20,229 and 20,249 (which involve the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America), and in Nos. 20,158 and 20,191 (which involve the Order of Railway Conductors and Brakemen). On page 41 of that Opinion, the Court stated that:

"The parties are directed to submit within 10 days a proposed judgment, and to confer and endeavor to agree thereon. At that time the parties may also request supplemental rulings on any matters that have not been discussed in this opinion."

We have concluded that, in order to comply with this directive in the manner that would best meet the convenience of the Court and of counsel, we should make separate submissions with respect to the cases involving the BRT and SUNA and the cases involving the ORC&B as those unions do not have the same counsel as the union involved in these appeals and to some extent different problems are involved in the three sets of cases.

We are not entirely certain what effect the above-quoted directive by the Court may have upon the time in which the parties may petition for rehearing under Rule 26(a) of this Court, which provides, in part, that: "A petition for rehearing may be filed with the Clerk when accompanied by proof of service on the adverse party within fifteen days after judgment or decision . . . ." It may be that the parties will have until 15 days after entry of the judgment, the form of which is now being proposed, in which to petition for rehearing with respect to any issue including those which clearly were decided in the Opinion of May 12, 1967. We are not certain that that is so, however, and it seems to us that, in any event, the Court may be benefitted in considering the form of the judgment to be entered if it has our views concerning any ruling clearly made in the Opinion of May 12, 1967 as to which a rehearing may be justified.

We assume, of course, that following any supplemental rulings or the entry of a judgment which reflects any rulings contrary to our present understanding of what the Court has decided, we will be entitled to petition for a rehearing with respect to such matters.

A. Requests for Supplemental Rulings or  
for A Rehearing.

1. The rules in effect following the expiration of the Award. The principal issues between the parties in these cases concerned the rules in effect following the expiration of Award 282. Very generally, the carriers contended that their crew-consist rules as modified by or pursuant to the Award continued to apply until changed in accordance with the Railway Labor Act while the unions contended that the rules in effect prior to Award 282 automatically were restored upon the expiration of the Award. We understand the Court to have agreed with the carriers on this general issue. Thus the Court stated (Opinion, at 17) that:

"We think the mere limitation of the effective period of the Award neither implies nor compels the construction the unions seek. Our ruling is that the work rules created by the Award constituted a new plateau that was not automatically eroded when the Award expired. The legal underpinning for our ruling is not the Joint Resolution, which expired after 180 days of life--except insofar as necessary to sanction the Award. The ruling is not based on the Award, which had only a 2-year life, or on any agreement of the parties. The predicate of our ruling is, simply, the force of the Railway Labor Act. Certain work rules were in force on January 24, 1966 (or March 30, 1966, in the case of the BLF&E). The mandate of the Railway Labor Act requires that the work rules in effect on any particular day shall also be in effect the following day--beyond the power of either party to institute a unilateral modification--subject to change only in accordance with the procedures prescribed by the Act . . . . This new-plateau reasoning applies even though the work rules are established by agreements of limited duration. "The effect of § 6 is to prolong agreements subject

to its provisions regardless of what they say as to termination.' [quoting Manning v. American Airlines, Inc., 329 F.2d 32, 34 (2d Cir., 1964)]. It likewise applies even though the work rules are established by an arbitration award of limited duration."

We understand the Court, therefore, to have affirmed the rulings by Judge Holtzoff in his May 12, 1966 judgment which were appealed from by the union, insofar as those rulings related to the rules in effect after the expiration of the Award. As this Court stated, at page 5 of its opinion, "we approve the conclusion of the District Court that the work rules in effect following the expiration of the Award in 1966 did not revert to the 1963 condition and that the new plateau of work rules, established for early 1966 by the Award, continued in effect unless changed in accordance with the Railway Labor Act." The Court did not, however, expressly refer to or consider the appeal by the carriers, in its Opinion of May 12, 1967.

The carriers appealed from the rulings below that they could not, after the expiration of the Award, separate from employment certain firemen having limited seniority or offer some of them comparable jobs pursuant to the carriers' rules as modified by Paragraphs C(2), C(3), C(4) and C(6) of the Award. See Carriers' Brief, at 31-35. But while the Court did not mention the carriers' appeal in this regard, the reasoning of the Court in rejecting the unions' contentions would appear to provide solid support for the carriers' position that the court below erred in making those rulings.

Thus, as we have noted, this Court stated, among other things, that its "ruling is that the work rules created by the Award constituted a new plateau that was not automatically eroded when the Award expired," and that the "mandate of the Railway Labor Act requires that the work rules in effect on any particular day shall also be in effect the following day . . . subject to change only in accordance with the procedures prescribed by the Act." See



the quotation on page 3, supra. Section II-A(1) of the Award provided that: "All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award." Hence, all aspects of Section II of the Award, including the provisions of Sections II-C(2), (3), (4) and (6), directly modified the "work rules" in effect prior to the Award and became a part of those rules. Insofar as we can see, there is no difference between a rule establishing the circumstances in which a fireman may be separated from employment and a rule regulating the nature of his employment, insofar as the application of the "mandate of the Railway Labor Act" is concerned.

We note that there is a distinction between the situation involved in the carriers' appeals in these cases and the situation involved in the carriers' appeals in those cases dealing with the crew-consist aspects of Award 282. Those appeals involved rulings below that procedures established by the crew-consist provisions of the Award for changing crew-consist rules could not be initiated or completed after the expiration of the Award, while Sections II-C(2), (3), (4) and (6) directly modified and became a part of the carriers' rules governing the use of firemen (helpers). While we do not think this distinction is material and that the crew-consist procedures established by the Award also continue to apply until changed in accordance with the Railway Labor Act, it is the only possible basis that we can see for distinguishing one part of the Award from another for purposes of determining the situation following the expiration of the Award.



Since we are informed that the union does not agree with our understanding as to the position of the Court with respect to this matter and since the Court did not expressly refer to the carriers' appeal in its opinion, however, we request that the Court make a supplemental ruling and submit that such ruling should hold that the court below erred in those aspects of its judgment appealed from by the carriers.

2. Prematurity of the Section 6 notices. Of course, we disagree with the opinion of the Court insofar as it overrules the decision below with respect to the prematurity of the Section 6 notices served by the BLF&E prior to the expiration of the Award and with respect to certain related issues. That matter was extensively briefed and argued, and obviously has been the subject of extended consideration by the Court. The Court in its opinion, however, relies heavily on an authority and upon considerations which were not urged by our opponents and which we believe do not support the decision of the Court, or are in error. We think we are justified, therefore, in also requesting reconsideration or rehearing of the prematurity issue. The Court stated (Opinion, at 22-24), among other things, that:

"In essence then we have a mechanism tantamount to an arbitration agreement, albeit one drafted by Congress, that confers on the arbitrator the power to impose a settlement binding for up to two years. It becomes appropriate, then, to consider what would have been the rights and duties of the parties if they had themselves written the arbitration agreement. We are not concerned here with customary adjudicatory or grievance arbitration. Although so-called 'legislative' arbitration agreements are relatively infrequent they are not unknown. Under such agreements, prospective rules and working conditions, instead of being determined by agreement of the union and employer, as is customary, are determined by an arbitrator to whom the function is delegated. Such a determination by arbitration is equivalent to a determination by agreement insofar as the rights and duties of the parties concerning future modification are concerned. An arbitration award does not

operate to 'prevent the [parties] from seeking through negotiations under the procedures provided for by the Railway Labor Act or otherwise a new agreement . . . covering the rules . . . .' [citing Brotherhood of Railroad Trainmen v. St. Louis Sw. Ry., 220 F. Supp. 319, 326 (E.D. Tex., 1963).]

\* \* \* \* \*

To recapitulate, the Railway Labor Act not only requires railway employers and unions to confer and bargain on work rules established by agreements or awards having a fixed expiration date when one party wants to change the rules, but permits the statutory machinery to be invoked prior to expiration in order to seek an agreement on changes to become effective on or after expiration.

If an agreement (or award) contains a fixed expiration date, rather than the common indefinite or automatic self-renewal term, then the notice must indicate a proposed effective date for changes that is not only at least thirty days after the notice, but also a time after the outstanding agreement or award expires. Nothing in the Railway Labor Act, or the scheme of Public Law 88-108, forbids service of a notice more than thirty days before the suggested rules would or could be effective, and nothing relieves the recipient from the duty to commence bargaining at that earlier stage."

We note first our belief that nothing in the St. Louis Southwestern opinion, quoted by this Court, supports the decision on the prematurity issue. That case held an arbitration award to be valid and denied a request for injunctive relief against enforcement of the Award. There was no issue in the case, as we understand the opinion of Chief Judge Sheehy, as to whether the union could serve or require bargaining upon Section 6 notices during the period of an arbitration award. Indeed, in the sentence from which this Court took its quotation, Chief Judge Sheehy merely pointed out that he was not deciding any such issue, as follows: "Nothing herein stated shall be construed as an expression of an opinion by the Court that the Defendants are not under a duty and obligation to comply with the provisions of the Railway Labor Act in an effort to reach a new agreement with the Plaintiffs relative to the rules,

rates of pay and working conditions of the employees represented by the Plaintiffs who are affected by the coordination in question after the coordination is put into effect in accordance with the decision of the Arbitrator." 220 F. Supp., at 326. Moreover, the arbitration award involved in the case did not have a termination date but was for an indefinite term. See 220 F. Supp., at 326-328, where the award is set forth.

The latter observation brings us to our second point. That relates to the statement by the Court in the last paragraph quoted above to the effect that if "an agreement (or award) contains a fixed expiration date, rather than the common indefinite or automatic self-renewal term," then a Section 6 notice to change the agreement (or award) must propose that the change take place after the expiration of the fixed termination date, but "[n]othing in the Railway Labor Act . . . forbids service of a notice" prior to that termination date. This has not been the interpretation given to the Railway Labor Act by the only prior cases of which we are aware that have considered the matter. Those cases were not called to the attention of the court in our brief since, as we have noted, the views of the Court which we have just referred to were not urged by the union.

In Flight Engineers' Inter. Ass'n v. American Airlines, Inc., 303 F.2d 5 (5th Cir., 1962), appeal dismissed by stipulation, 314 F.2d 500 (5th Cir., 1963), the carrier and union had entered into a five-year collective bargaining agreement effective May 1, 1958. On the same day, the carrier and union also entered into a supplemental agreement which related only to jet aircraft operations. The supplemental agreement provided that "written notice of an intended change in any provision could be served 30 days after the first anniversary date of the first turbine aircraft in scheduled passenger service." 303 F.2d, at 7. The union served a notice under Section 6 of the Railway Labor Act

within the period thus provided in the supplemental agreement, but "the Carrier took the position that a number of [the union's] demands were actually covered by the terms of the basic agreement, and therefore not open for bargaining for 5 years." Ibid.

The trial court enjoined a strike by the union pending a determination by an adjustment board, under Section 3 of the Railway Labor Act (45 U.S.C. §153), of whether or not the union's demands were outside the scope of the reopening clause in the supplemental agreement, and the Fifth Circuit affirmed. The Court of Appeals noted that the issue as to whether the "demands were outside the scope of the reopen clause involved two questions"--the interpretation of that clause and a question of law "whether on either interpretation of the contract, the Union could, or could not, compel bargaining." 303 F.2d, at 12. With respect to the latter question, the Court stated (303 F.2d, at 13) that:

"Again, without anticipating what the decision of the System Board of Adjustment on the merits (assuming it has jurisdiction) must be, this analysis rests on the premise that the law as such will give vitality to the duration clauses and correlative reopening clauses of labor contracts. The Union argues in effect that since no one in 1958 knew all of the problems which would arise in the operation of jets, the Union could not foreclose its statutory right--and duty--to bargain when, and as, and as often as needed. But any such rule leads either to chaos or a demolition of the concept of industrial peace through labor contracts fairly arrived at."

In Capitol Airways, Inc. v. Air Line Pilots Ass'n, 41 CCH Labor Cases ¶16,739 (M.D. Tenn., 1961), the carrier and union executed a collective bargaining agreement which contained a provision that the agreement would expire on June 30, 1961. The plaintiff contended that it was a "valid contract" and hence that it had "no duty to bargain with the defendant" union in regard to the employees covered by the contract "until the contract expires on June 30, 1961." The union, on the other hand, contended that the "contract is void

and therefore the plaintiff has the duty to bargain at the present time" with respect to those employees. The Court stated that if the agreement were valid it follows "necessarily that the plaintiff is not required to bargain [with those employees] with respect to their terms and conditions of employment until the expiration of such agreement on June 30, 1961;" held that the agreement was valid, and granted a summary judgment for the plaintiff carrier. See, also, Rutland Ry. v. Brotherhood of Loc. Eng., 307 F.2d 21, 36 (2d Cir., 1962), where the court, in a "minor" dispute case, stated, in dicta, that: "We do not say that the issue in the present case is not a bargainable one. We have no doubt that the brotherhoods upon the expiration of the existing agreements, may require the railroad to bargain . . . ." (Emphasis added.)

These cases stand for the proposition that, under the Railway Labor Act, carriers and unions by agreement may preclude for a specified period their rights to serve and require bargaining upon a Section 6 notice, and for the further proposition that the inclusion of a termination clause in an agreement has the purpose and effect of precluding any bargaining upon the matters covered by the agreement prior to its termination. Indeed, this view is implicit in the holding of the Manning case, upon which this Court relied, that the obligations of the parties under an agreement continue after the specified expiration date until changed in accordance with the Railway Labor Act. In the railway and airlines industries subject to that Act, the significance of a fixed expiration date in a collective bargaining agreement is not that the rights of the parties under the agreement then terminate, but that the parties then have the right to demand bargaining upon proposals to change the agreement. If the parties desire to permit the matters covered by the agreement, or some of them, to be the subject of bargaining at a specific earlier point, they include a

reopening clause in the agreement. See United Ind. Wkrs. v. Board of Trustees of Galveston Wharves, 351 F.2d 183, 185, 190 (5th Cir., 1965); Manning v. American Airlines, Inc., 329 F.2d 32, 33 (2d Cir., 1964); Pan American W. Airways v. Flight Engrs. Int'l Ass'n, 306 F.2d 840, 843 (2d Cir., 1962); American Airlines, Inc., v. Air Line Pilots Ass'n, 169 F. Supp. 777, 790 (S.D. N.Y., 1958). If the service of a new Section 6 notice at any time after the effective date of the agreement is intended to be permitted, the parties simply omit any expiration date--the "common indefinite . . . term" agreements to which this Court referred.

This Court indicated in its opinion that it considers the principles applicable to agreements having a fixed termination date to be applicable also to arbitration awards having a fixed termination date. We agree, but for the reasons stated above we submit that the Court erred in its view that, under the Railway Labor Act, such agreements or awards permit a party to require the resumption of bargaining prior to the fixed termination date. Rather, the whole purpose of the termination date is to preclude bargaining upon proposed changes in the agreement from being required prior to that date. We believe that the error of the Court in this regard calls for a rehearing or other reconsideration of its holding that the fixed termination date provided in P.L. 88-108 and Award 282 pursuant thereto was not intended to preclude the unions from requiring the carriers to bargain, prior to that date, upon Section 6 notices proposing changes in the rules established by the Award.

While we do not agree with other aspects of the Court's opinion concerning the prematurity issue and related matters, such as the holding that "Notice No. 1" served by the BLF&E is valid and bargainable, we have nothing further to add at this time to the arguments already presented to the Court.



But we do believe that the considerations urged above, which were not previously presented to the Court, indicate that the Court erred in a matter which appears to us to have been crucial to the Court's ultimate ruling that the Section 6 notices served during the period of Award 282 were not premature and that bargaining upon those notices could be required during the period of the Award, as long as the notices proposed changes to take effect only after the expiration of the Award. Consequently, we request a reconsideration or rehearing of that ruling.

3. The Norris-LaGuardia Act. The Court did not refer in its opinion to the contention by the BLF&E as to the applicability of the Norris-LaGuardia Act. See Carriers' Brief, at 45-53. However, the opinion of the Court in No. 20,316 (decided by the same panel on May 12, 1967 and also involving the BLF&E) confirmed our contention that "the Norris-LaGuardia Act . . . does not apply to prohibit or govern injunctive proceedings regarding acts determined to be violative of the Railway Labor Act." Opinion in No. 20,316, at 18. That decision should obviate any need for a supplemental ruling upon the Norris-LaGuardia issue in these cases.

B. The Judgment to be Entered by the Court.

In accordance with the directions of the Court (Opinion, at 41), counsel for the various parties in all the cases decided by the Opinion of May 12, 1967 conferred on Thursday, May 18, 1967, and endeavored to agree upon a proposed judgment. However, counsel for the carriers and counsel for the respective unions disagreed both in matters of substance and in matters of approach.

One difference of approach concerns the function or nature of the judgment to be entered by the Court. If we are correct in our understanding of the usual practice when a decision below is reversed in whole or in part, the judgment entered by this Court remands the case with directions that a new judgment or order be entered in conformity with the directions of this Court; e.g., dismissing the complaint rather than granting relief thereon, denying rather than granting a motion for summary judgment, or modifying the original judgment below in various particulars. Counsel for the various unions indicated in our conference that they had the same understanding of the usual practice, but consider the request by this Court for submission of a proposed judgment to indicate that the Court does not intend to follow that practice here. Accordingly, the judgments which they propose would not remand the cases for the entry of new judgments below in conformity with the directions of this Court, but would constitute the ultimate judgments in the cases.



We do not agree that the Court had any such intention. In our view, the reason for the submission of proposed judgments to this Court is to assist the Court in formulating its directions to the court below as to the new judgments to be entered by that court. We do not believe that the action of the Court in calling for proposed judgments indicates an intention to depart from its usual practice concerning the nature of the judgment to be entered, any more than does the action of the Court in calling upon the parties to submit requests for supplemental rulings if they so desire. Both procedures seem to us to stem simply from a desire to avoid overlooking some matter because of the multiplicity of cases and issues involved. Accordingly, the judgments which we have proposed follow the usual form: by remanding the cases with directions.

We note that one consequence of the approach favored by the unions, whereby the ultimate judgments are entered by this Court and new judgments are not entered in the District Court, is their proposals for including provisions in this Court's judgments whereby application could be made directly to this Court for future interpretation and enforcement of the judgments. We cannot believe that the Court intended to permit the District Court to be by-passed in this manner and to draw upon itself the task of giving original consideration, which could include extensive trials or hearings of factual disputes, to such matters.

While we have not yet seen the arguments which the unions may make in support of their proposed judgments, we are not aware of any reason peculiar to these cases why the Court should depart from its usual practice. The number and complexity of the cases and issues undoubtedly constitute good

reason for obtaining the assistance of counsel in formulating the directions to be given to the court below, but they do not constitute any reason for bypassing that court altogether and having the ultimate judgments in these cases entered by this Court. We note, in this regard, that the judgment proposed by the BLF&E is understandable only by reference to the original judgment entered by the court below. We fail to see why it would not be far more preferable simply to remand the case for the entry of a fresh judgment incorporating those modifications of the old judgment which this Court may direct.

Another difference in approach concerns those matters dealt with in the judgments below which were not discussed in the opinion by this Court. We would have thought it evident that any part of the judgment below not overruled by this Court remains undisturbed, subject to the right of the parties to "request supplemental rulings on any matters that have not been discussed in" the Court's opinion. Our opponents apparently take the position that any ruling below not discussed by this Court either has been overruled or else drops out of the case, although they are not entirely consistent in their application of that approach.

Finally, we believe that the language of the original judgments below should be retained insofar as possible consistent with the rulings of this Court. The parties have had more than a year in which to operate under that language and by now are relatively certain as to its meaning and effect, while new language is bound to create uncertainties even though no substantive change was intended. The BLF&E is the principal offender in this regard as its proposed judgment would substantially rewrite the judgment entered below on May 12,

1966 even with respect to matters as to which this Court expressly affirmed the decision below and despite that fact that no issue was raised in the briefs or arguments concerning the manner in which the judgment below set forth the rulings of the District Court.

1. The carrier's proposed judgment. Appendix A hereto sets forth the substance of the judgment which we propose be entered in the event that the Court rules in our favor upon the matters as to which we have requested a supplemental ruling or a rehearing. Appendix B sets forth the May 12, 1966 judgment entered below, and shows the changes which would be made therein if the Court enters the judgment which we propose in Appendix A. Appendix C sets forth the substance of the judgment which we propose be entered in the event that the Court rules against us on the matters as to which we have requested a supplemental ruling or a rehearing. Appendix D sets forth the May 12, 1966 judgment entered below, and shows the changes which would be made therein if the Court enters the judgment which we propose in Appendix C. Should the Court agree with us on some of the issues as to which we have requested a supplemental ruling or rehearing and disagree on others, we do not believe it will be difficult to select the appropriate provisions from the two proposals.

Appendix A. As noted, this proposed judgment assumes that the Court will rule in our favor upon the issues as to which we have requested a supplemental ruling or rehearing.

The parties are agreed that the first three ordering paragraphs of the judgment below should not be changed in any way. A favorable decision on our request for a supplemental ruling with respect to the issues raised

by the carriers' appeals, however, would require a revision of paragraph 4 in the judgment below. That paragraph set forth the holding by Judge Holtzoff that the carriers could not, after the expiration of the Award, terminate the employment of certain firemen or offer certain firemen comparable jobs pursuant to the carriers' rules as modified by Paragraphs C(2), C(3), C(4) and C(6) of Section II of the Award. In numbered paragraph 1 of Appendix A, we propose a substitute for paragraph 4 of the judgment below which would reflect a favorable decision upon our request for a supplemental ruling on the carriers' appeals from that holding (pp. 3-6, supra). We believe that the language of that proposal is self-explanatory. A favorable decision upon that request for a supplemental ruling also necessitates a slight change in paragraph 5 of the judgment below, since there would no longer be any reason to make the declaration in paragraph 5, that the carriers' rules as modified by the Award continue to apply until changed in accordance with the Railway Labor Act, subject to an exception for the provisions of paragraph 4. Numbered paragraph 2 of Appendix A provides for that modification. Since this Court expressly rejected the union's appeal from the ruling below that the carriers' work rules as modified by the Award did so continue to apply and approved the ruling below in that regard (Opinion, at 5, 17; see pp. 3-4, supra), that aspect of paragraph 5 in the judgment below should remain unchanged.

The parties are agreed that paragraph 6 in the judgment below should not be changed. Paragraphs 7 and 8 of that judgment set forth the rulings by Judge Holtzoff with respect to the prematurity of the Section 6 notices served during the period of the Award. Since we have requested reconsideration of

this Court's holding that the notices were not premature (pp. 6-12, supra) and assume for purposes of the judgment proposed in Appendix A a favorable response to that request, those paragraphs would not be changed by Appendix A.

Paragraph 9 of the judgment below sets forth the ruling by Judge Holtzoff that "Notice No. 1" and "Notice No. 2" served by the BLF&E are invalid and non-bargainable. This Court affirmed that ruling with respect to "Notice No. 2" but reversed with respect to "Notice No. 1," and we have not requested reconsideration of that reversal (see pp. 11-12, supra). Consequently, paragraph 9 of the judgment below must be revised to reflect the reversal with respect to "Notice No. 1." Numbered paragraph 3 of Appendix A would effect the necessary modifications simply by eliminating the reference in paragraph 9 of the judgment below to "Notice No. 1" and making the grammatical changes necessitated by the fact that the paragraph would refer to one rather than two proposals.

In essence, paragraph 10 of the judgment below enjoins the BLF&E from striking over actions by the carriers declared to be valid in the preceding paragraphs of the judgment. The modifications which we have proposed in certain of those preceding paragraphs, consequently, will necessitate concomitant modifications in paragraph 10. Those modifications would be effected by numbered paragraph 4 of Appendix A. The first such modification occurs in subparagraph (5) of paragraph 10, and reflects the reversal of the ruling below as to the invalidity of "Notice No. 1" by eliminating the reference thereto in subparagraph (5). Since "Notice No. 1" is no longer regarded as invalid, the prematurity issue becomes significant with respect thereto as

well as with respect to "Notice No. 3," and subparagraph (6) would be revised to include "Notice No. 1" in the aspect of the injunction based upon the rulings as to prematurity. The proposed subparagraph (7) is new and reflects the modification that would be made in paragraph 4 if the Court rules in our favor on the carriers' appeals. The proposed subparagraph (8) is simply a renumbering of subparagraph (7) in the judgment below in view of the insertion of a new subparagraph as (7).

The remaining paragraphs in the judgment below are procedural in nature and were not questioned by any party in the briefs and arguments before the Courts, so that they would not be changed by Appendix A.

Appendix C. As we have noted, this proposed judgment assumes that the Court will rule against us on the issues as to which we have requested a supplemental ruling or a rehearing. Upon the basis of this assumption, the holding by Judge Holtzoff that firemen cannot be separated from employment or offered comparable jobs, after the expiration of the Award, pursuant to the carriers' rules as modified by Paragraphs C(2), C(3), C(4) and C(6) of the Award will be affirmed, and there will be no need to modify paragraphs 4 and 5 of the judgment below. As we have noted, the parties are agreed that paragraphs 1, 2, 3 and 6 of that judgment should not be changed.

Assuming that the Court adheres to its view that the Section 6 notices served during the period of the Award were not premature, paragraph 7 of the judgment below setting forth the contrary ruling by Judge Holtzoff will have to be revised. This would be accomplished by numbered paragraph 1 of Appendix C. We think it sufficient in that regard simply to declare that the Section 6

notices were not premature, just as paragraph 7 in the judgment below simply declared that they were premature. Paragraph 8 of the judgment below was based upon the prematurity ruling in paragraph 7 of that judgment and cannot survive the reversal of the ruling in paragraph 7. Hence, we think that paragraph 8 should be eliminated altogether if the Court adheres to its prematurity decision, and numbered paragraph 2 so provides.

Numbered paragraph 3 of Appendix C would renumber paragraph 9 of the judgment below as paragraph 8, and would modify the first sentence of that paragraph to eliminate the reference to "Notice No. 1" in accordance with the ruling by this Court holding that proposal to be valid and bargainable. See p. 18, supra. The parties stipulated out of this proceeding (J.A. 140) any issue as to the validity and bargainability of "Notice No. 3," apart from the prematurity issue. To give full effect to that stipulation, in the event that the Court adheres to its prematurity ruling, the second sentence of paragraph 9 in the judgment below must be slightly revised to note the exception for the prematurity issue and to delete the words "after the expiration of the Award" since, if the proposal was not premature, the reserved issues as to its validity are significant also with respect to the period prior to the expiration of the Award. This Court noted and gave



effect to the stipulation, stating (Opinion, at 30) that: "By stipulation of the parties we need not here consider Notice No. 3, which set out a training program for apprentices."

Paragraph 10 of the judgment below also would have to be renumbered because of the elimination of the present paragraph 8, and also would have to be modified to reflect the modifications in the preceding paragraphs declaring the rights of the parties. This would be accomplished by numbered paragraph 4 of Appendix C. The revision in subparagraph (5) of the present paragraph 10 of the judgment below reflects the reversal of the holding that "Notice No. 1" is invalid by eliminating the reference to that proposal. Subparagraph (6) of the present paragraph 10 would be eliminated altogether in view of the holding by this Court that the notices served during the period of the Award are not premature, and subparagraph (7) consequently would be renumbered as subparagraph (6).

Numbered paragraph 5 of Appendix C simply renumbers the remaining paragraphs in the judgment below as a result of the proposed elimination of the



present paragraph 8. No change would be made in the language of those remaining paragraphs, for the reasons stated at p. 19, supra.

2. The union's proposed judgment. In the meeting of counsel on May 18th, we were given a copy of a draft of a proposed judgment prepared by counsel for the BLF&E, and we have since been orally advised of certain changes therein. But we have not yet seen the final submission by the BLF&E to the Court, including its explanation of the grounds for the various provisions of the judgment which it proposes. In addition, we have had to deal with the proposals by the BRT and SUNA and by the ORC&B, as well as prepare three sets of proposals and supporting memoranda of our own, so that we have been pressed for time. Unless the Court deems it to be inappropriate, therefore, we may file further comments upon the proposals by the unions after we have had an opportunity to study their submissions to the Court. We have already noted our disagreements with the unions concerning the form of the proposed judgments. We comment below, therefore, only upon the substance of the judgment proposed by the BLF&E.

We have already noted the agreement of the parties that paragraphs 1, 2, 3 and 6 of the judgment below should not be modified. Part A of the judgment proposed by the BLF&E demonstrates its agreement in that regard. We strongly disagree with the substance and form of the numbered paragraphs in Part B of the judgment proposed by the BLF&E. Instead of retaining the language of the judgment below insofar as consonant with the opinion by this Court, the BLF&E would completely rewrite that judgment. Even if it could be said that the proposed substitute language had the same meaning as those portions of the judgment below which were affirmed by this Court, this could not be justified.

See pp. 15-16, supra. Thus, none of the other unions have adopted such an approach. More importantly, however, much of the language proposed by the BLF&E is inconsistent with and would substantially nullify the decision of this Court as well as those aspects of the decision below which were affirmed by this Court.

We deal first with numbered paragraphs 4 and 5 of the proposed judgment, which concerns the rules in effect after the expiration of the Award. Both the District Court and this Court flatly rejected the contention by the BLF&E that the rules in effect prior to P.L. 88-108 and the Award -- the National Diesel Agreement with regard to the use of firemen -- were automatically restored upon the expiration of the Award. This Court stated that "the mere limitation of the effective period of the Award neither implies nor compels the construction the unions seek," and that "the work rules created by the Award constituted a new plateau that was not automatically eroded when the Award expired." Rather, the "mandate of the Railway Labor Act requires that the work rules in effect on any particular day shall also be in effect the following day . . . subject to change only in accordance with the procedures prescribed by the Railway Labor Act." (Opinion, at 17; emphasis added.) Consequently, this Court "approve[d] the conclusion of the District Court that the work rules in effect following the expiration of the Award in 1966 did not revert to the 1963 condition and that the new plateau of work rules, established for early 1966 by the Award, continued in effect unless changed in accordance with the Railway Labor Act" (Opinion at 5; emphasis added).

Contrary to these express rulings by the Court, paragraphs 4 and 5 of the judgment proposed by the BLF&E would provide that the "manning requirements of the National Diesel Agreement of 1950 were not restored in full" (paragraph 4), but that they "were restored" in substantial part. Nothing in the opinion of this Court, and nothing in the Railway Labor Act upon which the Court relied, purports to make a distinction among the "manning requirements of the National Diesel Agreement of 1950" so that some were automatically restored upon the expiration of the Award even though others were not. Nor could such a distinction properly be made. The Section 6 notices served by the carriers in 1959 proposed, among other things, to completely eliminate "the manning requirements" of the Diesel Agreement, the procedures of the Railway Labor Act were exhausted with respect to these notices so that the carriers were free to disregard that agreement but for P.L. 88-108, and P.L. 88-108 provided that the Award was to constitute a "complete and final disposition" of the dispute. Thus the "manning requirements" of the Diesel Agreement and other prior rules governing the use of firemen now exist only insofar as they were continued or adopted by Award 282, and Section II-A(1) of that Award provided that such rules "shall continue undisturbed except as modified by the terms of this Award" (emphasis added).

The impropriety of the proposed paragraphs 4 and 5 is further demonstrated by the remaining provisions of those paragraphs. This Court stated that "the new plateau of work rules, established for early 1966 by the Award, continued in effect unless changed in accordance with the Railway Labor Act." (Opinion, at 5; emphasis added.) Paragraph 4 of the proposed judgment provides not that the work rules shall continue as the new plateau, but the

"physical facts of jobs vacated and firemen eliminated" shall so continue. Thus, the carriers would not be able to apply their work rules as established by the Award, but would be required to maintain a fireman in each position occupied by a fireman on March 31, 1966 even though the rules established by the Award would authorize the abolition of that position when no longer needed to provide employment to "protected" firemen or for other reasons, including the transfer of firemen to an extra board to meet the needs of the board. See the opinion by this Court on May 12, 1967 in No. 20,135. Indeed, the carriers apparently would not even be permitted to abolish a crew because of reductions in business. The BLF&E is not willing to carry this unique approach to a point where it would injure the interests of the BLF&E, however. Thus, on crews established subsequent to March 31, 1966 the carriers would be required to use firemen even though that was not one of the "physical facts" in existence on March 31, 1966,<sup>1/</sup> and firemen would be permitted to continue to take advantage of the seniority rules so as to change the "physical facts" existing on March 31, 1966 to their benefit.

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<sup>1/</sup> The proposal that firemen be required to be used on all crews established after March 13, 1966 apparently is based on the contention that the National Diesel Agreement has been "restored" in part and applies to such crews. As we have shown, that Agreement no longer exists except as continued by the Award subject to the modifications made by the Award, and Section II-B(3) of the Award provides that firemen need not be used on such new crews except for positions (up to 10 percent) vetoed by the BLF&E.

Much the same contentions were made by the BLF&E to the District Court in motions for supplemental relief under its judgment of May 12, 1966 and were rejected by that Court in orders which are now pending here as Nos. 20,472, 20,473, 20,647, 20,909 and 20,910. They should be rejected here. To repeat, it is the rules that continue to apply until changed in accordance with the Railway Labor Act, not the "physical facts of jobs vacated and firemen eliminated" on a particular day. Section 6 of the Act, upon which the Court relied, provides for notice of intended changes in "rates of pay, rules, or working conditions," not of intended changes in "physical facts" as to which the rules already permit changes to be made.

The BLF&E apparently will rely upon the statement, at page 18 of the opinion of May 12, 1967, that "the case is governed by the combination of undeniable physical facts plus the general legal rule of the Railway Labor Act." But obviously the Court was not using "physical facts" in the sense in which those words are used by the BLF&E to mean that each crew must remain exactly as it was on March 13, 1966. The "physical facts" to which this Court referred were not the "jobs vacated and firemen eliminated," but the "work rules" established by Award 282 as it made clear by the discussion of the Court on pages 16 and 17 of its opinion, which discussion the statement on page 18 merely purports to summarize. In addition to the portions of the opinion already cited, the Court thus stated immediately before the statement apparently relied upon by the BLF&E that (Opinion, pp. 17-18):

"This by no means suggests that there is no legal significance in establishing an award or agreement as one of limited duration. The limited duration has the obvious significance that work rules can be changed for the post-expiration period. The work rules can be changed, however, only by compliance with the provisions of the Railway Labor Act prescribing how changes in work rules are to be effectuated." (Emphasis added.)

Numbered paragraph 7 of the judgment proposed by the BLF&E concerns the prematurity of the Section 6 notices. That proposal is completely inappropriate, of course, if the Court upon our request for reconsideration determines that the notices were premature. But even if the Court adheres to its prematurity ruling, the proposal is objectionable. While paragraph 7 of the judgment below specifically applied both to the notices served by the BLF&E and to the notices served by the carriers, the substitute paragraph proposed by the BLF&E would be limited to the notices which it served. Certainly, if the union's notices were not premature, the carriers' notices, which were served considerably later, also were not premature. Furthermore, the judgment entered below left no doubt as to the facts to which the particular rulings applied by expressly relating those rulings to the appropriate portions of the Stipulation entered into by the parties. We see no reason for discarding that aspect of the judgment below, which was not questioned in the briefs or arguments. We submit that numbered paragraph 1 of Appendix C hereto is preferable for these reasons to numbered paragraph 7 of the judgment proposed by the BLF&E, if the Court adheres to its prematurity ruling.

Numbered paragraph 8 of the judgment proposed by the BLF&E concerns the invalidity of its "Notice No. 2," and apparently is intended as a substitute for numbered paragraph 9 of the judgment below. We see no need for thus completely rewriting paragraph 9 of the judgment below, when all that is necessary to accommodate that paragraph to the decision by this Court is to eliminate the reference therein to "Notice No. 1." Furthermore, the BLF&E would eliminate the provision in paragraph 9 of the judgment below that:



"This Judgment does not determine any issue as to whether the railroads have an obligation after the expiration of the Award to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to that aspect of the proposals served by the BLF&E identified as 'Notice No. 3,' and is without prejudice to the rights of any party in that regard."

As noted at p. 20, supra, if the Court adheres to its prematurity ruling, the above-quoted language should be modified slightly, but certainly it should not be omitted entirely from the judgment. The parties stipulated (J.A. 140) out of the proceeding any issue as to the validity of Notice No. 3 or as to the duty to bargain about the proposals made therein, apart from the prematurity issue, and this Court so recognized, stating (Opinion, at 30) that: "By stipulation of the parties we need not here consider Notice No. 3, which set out a training program for apprentices."

Numbered paragraphs 9 and 10 in the judgment proposed by the BLF&E do not have any counterpart in the judgment below. They relate to the rulings by this Court that Notice No. 1 was neither premature nor invalid. Those rulings will be fully effectuated (assuming this Court adheres to its prematurity ruling) if the notice is declared not to be premature and the provision of the judgment below declaring the notice to be invalid is deleted, as we have proposed. See pp. 18-20a, supra. Insofar as prematurity is concerned, the issue before the courts, as stipulated by the parties (J.A. 139) was simply: "Whether the Section 6 notices served prior to the expiration of the Award and any proceedings with respect thereto were premature and ineffective." No issue was presented, and none was briefed or argued here, as to the further consequences of a ruling that the notices were not premature. The fact that the Court's opinion may

contain some dicta in that regard does not mean that the judgment should contain a provision based thereon. We suppose that it is most unusual for an opinion by a court not to contain some dicta, but judgments should be strictly limited to the issues that have been presented and decided.

If the Court deems the inclusion of some provision comparable to numbered paragraph 9 proposed by the BLF&E to be necessary, we think it should simply direct that paragraph 9 of the judgment below be further amended to provide, between the first and second sentences thereof, that: "That aspect of the proposals served by the BLF&E identified as "Notice No. 1" is valid and bargainable." Such modification, of course, would be in addition to those which we have proposed. See pp. 18 and 20, supra.

If the Court deems the inclusion of some provision comparable to numbered paragraph 10 proposed by the BLF&E to be necessary, we think it should direct the substitution for paragraph 8 of the judgment below (which paragraph we have proposed be deleted entirely, if the Court adheres to its prematurity ruling) the following provision:

"8. By refusing to participate in the initial conferences upon the properties as required by Sections 5 and 6 of the Railway Labor Act (45 U.S.C. §§155, 156) prior to the expiration of the Award, with respect to that aspect of the proposals (referred to in Section I-K of the Stipulation) served by the BLF&E upon certain of the railroads which was identified as "Notice No. 1," the railroads have foresaken their right to insist upon such conferences and the BLF&E, consequently, is entitled to invoke the services of the National Mediation Board with respect to "Notice No. 1" and to otherwise proceed to exhaust the procedures of the Railway Labor Act with respect thereto."

See pages 25-26 of this Court's opinion and compare numbered paragraph 9 of the judgment proposed by the unions in Nos. 21,152 and 20,172. In particular,



we note that in stating that "the carriers have foresaken their right to insist on conferences by their refusal to respect effective Section 6 notices" (Opinion, at 26), the Court clearly was referring to the initial conferences on the individual properties required by Sections 5 and 6 of the Railway Labor Act, and not to such further negotiations (whether on an individual basis or in national handling) as might be had in mediation or in other subsequent proceedings under the "major" dispute procedures of the Act. As this Court also stated (Opinion, at 25-26): "As we have seen, conferences are but the first step in the chain of Railway Labor Act procedures. Once they have been frustrated, one side to the dispute can move to the next tier of procedures, and indeed in at least one series of cases involving parties before us the National Mediation Board has accepted jurisdiction of the controversy." The generalized language of paragraph 10 of the judgment proposed by the BLF&E could be construed as holding that the carriers have foresaken any right to mediation, and that the BLF&E could immediately strike or resort to other self-help with respect to Notice No. 1. Obviously, this Court did not intend to so hold.

Numbered paragraph 11 of the judgment proposed by the BLF&E would grant the BLF&E injunctive relief against the carriers, with regard to Notice No. 1. When the BLF&E proposed that the judgment to be entered by the District Court enjoin the carriers from terminating the employment of firemen, etc., after the expiration of the Award, contrary to the ruling by the District Court, that Court pointed out that there was no proof of any threat by the carriers to refuse to respect the Court's rulings, while the BLF&E not only threatened to strike, but actually struck, in disregard of a temporary restraining order entered by the District Court (J.A. 211). On these appeals, the BLF&E did not question the

ruling that there was thus no factual basis for injunctive relief against the carriers, either in its brief or argument. No contention has been made that the carriers have in fact terminated the employment of firemen or offered comparable jobs, pursuant to Paragraphs C(2), C(3), C(4) or C(6) of the Award, since the ruling by the District Court that that could not be done, despite the absence of an injunctive provision requiring compliance with that ruling. In these circumstances, paragraph 11 of the judgment proposed by the BLF&E should be rejected out of hand. To the extent that this proposed paragraph refers to paragraph 9 of the judgment proposed by the BLF&E, it is also objectionable for the reasons stated above with respect to paragraph 9. The last sentence of the proposed paragraph 11 has nothing to do with this case, since there has never been any issue in the case as to a refusal of the carriers to participate in mediation. See J.A. 139-141. As the parties stipulated (J.A. 136) no mediation has been held by the National Mediation Board. Moreover, if the Court should require good faith participation in mediation by the carriers even though the matter was not in issue, it also should require good faith participation in mediation by the BLF&E.

Numbered paragraph 12 of the judgment proposed by the BLF&E would drastically modify paragraph 10 of the judgment below with respect to the extent of the injunctive relief against strikes by the BLF&E. Among other things, the BLF&E would be free to strike the carriers because of their refusal to restore the rules in effect prior to Award 282 upon the expiration of the Award, despite the affirmance by this Court of the judgment below in that regard and its express rejection of the union's contention that the old rules were restored. We believe that we have demonstrated that the only changes which should be made in paragraph 10 are those which we have proposed.

Numbered paragraph 13 of the judgment proposed by the BLF&E would provide that the judgment is "without prejudice to any application that may be made to the District Court" by the BLF&E "for any further relief, remedy, or compensation on account of" the carriers' refusal to bargain on Notice No. 1 during the period of the Award. Neither in its complaint in Civil Action No. 784-66 (J.A. 2-14) nor in its counterclaim in Civil Action No. 777-66 (J.A. 74-85) did the BLF&E request any relief with respect to the carriers' refusal to bargain on Notice No. 1. Thus, when the parties stipulated the issues to be decided in the May 12, 1966 judgment below and those to be reserved for a subsequent proceeding in the pending cases or for some other case (J.A. 139-141), they did not include any such claim by the BLF&E in either category. We submit that the proposed paragraph 13 is not justified in view of these circumstances.

Numbered paragraph 14 of the judgment proposed by the BLF&E obviously has no place in a judgment. In footnote 53 of its Opinion, this Court expressed its appreciation for the services rendered by Judge Holtzoff pursuant to the assignment to him of all "cases involving the railway work rules disputes," noted that "we have undertaken definition of the basic legal principles applicable to future consideration of the issues," and stated that it "would seem that sound judicial administration of the District Court's business will be served by rotation of this assignment at this juncture" to avoid "further burdening of this District Judge and the broadening of application of pertinent judicial expertise and exposure in meeting our common problems in this area." (Opinion, at 41.) Plainly, these were merely comments or suggestions by the Court, and not rulings to be included in a judgment. And even as a comment or suggestion,

the reference to rotation of future assignments in this area obviously refers to any new cases that might be filed -- not to further proceedings in the cases in which the judgments will be entered and which have already been assigned to Judge Holtzoff. The Court hardly could have contemplated, for example, that the contempt matter remanded for a further hearing in No. 20,316 would be heard by some judge other than Judge Holtzoff whose order was violated by the BLF&E.

Numbered paragraph 15 in the judgment proposed by the BLF&E would reserve jurisdiction in this Court, as well as in the District Court, of applications "for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this Judgment." We have already stated our reasons for believing that the Court did not intend to permit such applications to be made directly to this Court, by-passing the District Court, whenever the parties so desire. See p. 14, supra.

The BLF&E apparently would completely eliminate paragraph 11 of the judgment below, which provides that:

"The Court reserves jurisdiction of the proceedings claiming contempt referred to in Section II-C of the Stipulation, and this Judgment is without prejudice to the rights of any of the parties in such proceedings except insofar as issues which may be relevant thereto have been decided herein. The Court also reserves jurisdiction of the counterclaim for damages referred to in Section II-D of the Stipulation, and this Judgment is without prejudice to the rights of the parties with respect to the said counterclaim except insofar as issues which may be relevant thereto have been decided herein."

The "proceedings claiming contempt" thus referred to relate to the assessment of the coercive civil contempt fine incurred by the BLF&E and its President which was the subject of the decision by this Court in No. 20,316, and to

proceedings by the carriers which were struck by the BLF&E to recover compensation for damages resulting from the contemptuous strike. The "counterclaim for damages" referred to is the claim by the BLF&E for damages allegedly caused by the refusal of the carriers to restore the National Diesel Agreement and other rules in existence prior to the Award upon the expiration of the Award. Paragraph 11 of the judgment below, reserving those issues for further determination, was included pursuant to the stipulation by the parties (J.A. 140-141), and we can see no justification whatsoever for removing that paragraph from the judgment.

Respectfully submitted,

FRANCIS M. SHEA  
RICHARD T. CONWAY

SHEA & GARDNER  
734 Fifteenth Street, N. W.  
Washington, D. C. 20005

Attorneys for Appellees in  
Nos. 20,192 and 20,193 and for  
Appellants in Nos. 20,215  
and 20,216.

CERTIFICATE OF GOOD FAITH

I hereby certify that the foregoing Petition for Rehearing, Request for Supplemental Rulings and Proposed Judgment is presented in good faith and not for purposes of delay.

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Francis M. Shea

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Rehearing, Request for Supplemental Rulings and Proposed Judgment has been served upon the Brotherhood of Locomotive Firemen and Enginemen, this 22d day of May 1967, by delivery of copies to Joseph L. Rauh, Jr., Rauh and Silard, 1001 Connecticut Avenue, N.W., Washington, D. C., and to Isaac N. Groner, Cole and Groner, 1730 K Street, N. W., Washington, D. C., attorneys for the Brotherhood.

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Richard T. Conway

APPENDIX A

[Caption--Nos. 20192, 20193, 20215 and 20216]

Before Danaher, Circuit Judge, Bastian, Senior Circuit Judge, and Leventhal, Circuit Judge.

JUDGMENT

These appeals came on to be heard on the record from the United States District Court for the District of Columbia and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the District Court entered on May 12, 1966 is remanded to the District Court with directions to modify the said judgment as follows:

1. Change paragraph 4 to read as follows: "4. After the expiration of the Award, the railroads may continue to apply their rules as modified by Section II of the Award, until changed in accordance with the procedures of the Railway Labor Act, to terminate the employment of firemen (helpers) pursuant to such rules as modified by Paragraphs C(2), C(3), C(4) or C(6) of Section II of the Award and to offer comparable jobs to firemen (helpers) pursuant to such rules as modified by Paragraph C(6) of Section II of the Award."

2. Eliminate the words "Subject to the provisions of paragraph 4 above" from the second sentence in paragraph 5.

3. Change the first sentence of paragraph 9 to read: "That aspect of the proposals (referred to in Section I-K of the Stipulation)



served by the BLF&E upon certain of the railroads which was identified as "Notice No. 2" is invalid, and the railroads have no obligation to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act at any time with respect to that aspect of the proposals served by the BLF&E."

4. Change that part of paragraph 10 commencing with "(5)" and continuing to the end of the said paragraph to read: "(5) the failure or refusal of a railroad or railroads to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to that aspect of the proposals served by the BLF&E identified as "Notice No. 2" declared to be invalid in paragraph 9 above, or the failure or refusal of a railroad or railroads to accept that aspect of the proposals; (6) the failure or refusal of a railroad or railroads prior to the expiration of the Award to confer, bargain, negotiate or participate in mediation with respect to those aspects of the proposals served by the BLF&E identified as "Notice No. 1" and "Notice No. 3," or the failure or refusal of a railroad or railroads to accept either of those aspects of the proposals until such time as conferences and mediation have been had as provided in paragraph 8 above and the procedures of the Railway Labor Act otherwise have been exhausted; (7) the termination by a railroad or railroads of the employment of firemen (helpers) or the offer by a railroad or railroads of comparable jobs to firemen (helpers) pursuant to their rules as modified by Section II of the Award and in accordance with paragraph 4 above; or (8) any other actions by a railroad or railroads, or failures or refusals to act, which are authorized by this Judgment."



APPENDIX B

[Civil Actions Nos. 777-66 and 784-66—Caption and recitals omitted.]

IT IS HEREBY ORDERED, DECLARED, ADJUDGED AND DECREED:

1. The Interstate Railroad is dismissed as a party to this consolidated proceeding, pursuant to the oral motion on May 4, 1966 by its counsel and by counsel for the Brotherhood of Locomotive Firemen and Enginemen. The remaining plaintiffs in Civil Action No. 777-66, including those named as defendants in Civil Action No. 784-66, hereinafter are referred to as the "railroads." The Brotherhood of Locomotive Firemen and Enginemen, which is the defendant in Civil Action No. 777-66 and the plaintiff in Civil Action No. 784-66, hereinafter is referred to as the "BLF&E."

2. A railroad and its employees represented by the BLF&E were subject to Public Law 88-108 and the Award by Arbitration Board No. 282 thereunder if the railroad either served the BLF&E with the Section 6 notice of November 2, 1959 (referred to in paragraph 6 of the Complaint in Civil Action No. 777-66 and in paragraph 11 of the Complaint in Civil Action No. 784-66) or was served by the BLF&E with the Section 6 notice of September 7, 1960 (referred to in paragraph 8 of the Complaint in Civil Action No. 777-66 and in paragraph 12 of the Complaint in Civil Action No. 784-66), or both, and either notice remained outstanding throughout the period prior to the enactment of Public Law 88-108. All of the railroads and their employees represented by the BLF&E, consequently, were subject to Public Law 88-108

and the Award issued thereunder, including the railroads referred to in paragraphs 1 through 4 of Section I-C of the Stipulation (except to the extent that the application of the Award on the railroads referred to in paragraphs 1, 3 and 4 of Section I-C of the Stipulation was modified by the agreements entered into by such railroads and the BLF&E and attached as Exhibits A, B, D, E and F to the Stipulation, which agreements remain in full force and effect).

3. The period during which Section II of the Award by Arbitration Board No. 282 "shall continue in force," as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108 and as extended by agreement, expired at 12:01 A.M. on March 31, 1966.

~~4. After the expiration of the Award, the railroads cannot terminate the employment of firemen (helpers) pursuant to the provisions of Paragraphs C(2), C(3), C(4) or C(6) of Section II of the Award and cannot offer comparable jobs to firemen (helpers) pursuant to the provisions of Paragraph C(6) of Section II of the Award.~~

4. After the expiration of the Award, the railroads may continue to apply their rules as modified by Section II of the Award, until changed in accordance with the procedures of the Railway Labor Act, to terminate the employment of firemen (helpers) pursuant to such rules as modified by Paragraphs C(2), C(3), C(4) or C(6) of Section II of the Award and to offer comparable jobs to firemen (helpers) pursuant to such rules as modified by Paragraph C(6) of Section II of the Award.

5. The rules governing the use of firemen (helpers) in effect prior to the enactment of Public Law 88-108 were not restored upon the expira-

tion of the Award. ~~Subject to the provisions of paragraph 4 above, the~~  
The modifications in those rules made by Section II of the Award and actions taken thereunder created a new status which is to be maintained after the expiration of the Award until changed by agreement or until the procedures of the Railway Labor Act (45 U.S.C. §§151-160) have been exhausted with respect to valid notices served under Section 6 of that Act (45 U.S.C. §156) proposing changes in the status thus created. Unless otherwise agreed to by the parties, the railroads need not use firemen (helpers) on engines (other than steam powered) in freight and yard service except as required by the Award, including those provisions of the Award governing the rights of individual firemen (helpers) retained in engine service. Such individual firemen (helpers) shall continue to enjoy the protections of their rights to work which are provided in the Award, but the railroads need not hire a replacement for an individual fireman (helper) who retires, is discharged for cause or is otherwise removed from a railroad's active working list of firemen (helpers) by natural attrition, unless a replacement is needed to fill a position which was not subject to being abolished under the Award.

6. Those individuals who accepted offers of comparable jobs pursuant to Paragraph C(6) of Section II of the Award may continue in those jobs with the guarantees provided by the Award, but the railroads are not required to restore such individuals to firemen (helper) positions. Those individuals who were separated from employment by the railroads pursuant to the Award may retain the separation allowances paid to them in connection therewith, but the railroads are not required to restore such individuals to employment as firemen (helpers).

7. Notices of proposed changes in rules governing the use of firemen (helpers) as modified by the Award or actions under the Award served under Section 6 of the Railway Labor Act during the effective period of the Award were premature and could not become effective under Section 6 of the Railway Labor Act until the day after the expiration of the Award. This ruling applies to the notices served by the BLF&E upon certain of the railroads referred to in Section I-K of the Stipulation and to the notices served by certain of the railroads upon the BLF&E referred to in Section I-S of the Stipulation.

8. The parties serving or receiving the notices referred to in paragraph 7 above were under no obligation to confer, bargain or negotiate about the merits of the proposals made in those notices until after the notices became effective as provided in paragraph 7 above. The meetings described in Section I-L of the Stipulation, at which the railroads denied any obligation to negotiate about the merits of the proposals served by the BLF&E, did not constitute "conferences" within the meaning of Sections 5 and 6 of the Railway Labor Act (45 U.S.C. §§155, 156), and did not fulfill the requirement for conferences imposed by those Sections. Recourse to the National Mediation Board may be had only after the notices became effective and after conferences fulfilling the requirements of Sections 5 and 6 of that Act are commenced. The applications by the BLF&E for mediation, referred to in Sections I-N through I-Q of the Stipulation, therefore were premature and do not become effective until after conferences fulfilling the requirements of Sections 5 and 6 of the Railway Labor Act are commenced.

9. ~~These aspects~~ That aspect of the proposals (referred to in Section I-K of the Stipulation) served by the BLF&E upon certain of the railroads which ~~were~~ was identified as ~~"Notice No. 1" and "Notice No. 2"~~ are is invalid, and the railroads have no obligation to confer, bargain, negotiate, . participate in mediation or otherwise participate in procedures under the Railway Labor Act at any time with respect to ~~the said aspects~~ that aspect of the proposals served by the BLF&E. This Judgment does not determine any issue as to whether the railroads have an obligation after the expiration of the Award to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to that aspect of the proposals served by the BLF&E identified as "Notice No. 3," and is without prejudice to the rights of any party in that regard.

10. The Brotherhood of Locomotive Firemen and Enginemen, each of its lodges, divisions, locals, officers, agents and employees, and all persons acting in concert with them, are hereby permanently enjoined from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of any of the railroads over: (1) the failure or refusal of a railroad or railroads to restore or reinstate after the expiration of the Award by Arbitration Board No. 282 the rules in effect prior to that Award or to the enactment of Public Law 88-108; (2) the maintenance and application by a railroad or railroads pursuant to paragraph 5 above of the modifications made by the Award and actions taken thereunder in the rules in effect prior to the Award or to the enactment of Public Law 88-108, until such time as the status created by such modifications

is changed by agreement or the procedures of the Railway Labor Act have been exhausted with respect to valid Section 6 notices proposing changes in that status; (3) the failure or refusal of a railroad or railroads pursuant to paragraph 5 above to use firemen (helpers) on engines (other than steam powered) in freight and yard service except as required by the Award, or to hire replacements for individual firemen (helpers) who retire, are discharged for cause or otherwise are removed from a railroad's active working lists of firemen (helpers) by natural attrition; (4) the failure or refusal of a railroad or railroads to restore or reinstate as firemen (helpers) individuals who were separated from employment or given comparable jobs pursuant to the Award; (5) the failure or refusal of a railroad or railroads to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to ~~these-aspects that~~ aspect of the proposals served by the BLF&E identified as "~~Notice No. 1~~" and "Notice No. 2" declared to be invalid in paragraph 9 above, or the failure or refusal of a railroad or railroads to accept ~~these-aspects that aspect~~ of the proposals; (6) the failure or refusal of a railroad or railroads prior to the expiration of the Award to confer, bargain, negotiate or participate in mediation with respect to ~~that-aspect~~ those aspects of the proposals served by the BLF&E identified as "Notice No. 1" and "Notice No. 3," or the failure or refusal of a railroad or railroads to accept ~~that-aspect~~ either of those aspects of the proposals until such time as conferences and mediation have been had as provided in paragraph 8 above and the procedures of the Railway Labor Act otherwise have been exhausted; ~~or-(7)~~ (7) the termination by a railroad or railroads of the employment of firemen (helpers)



APPENDIX C

[Caption--Nos. 20,192, 20,193, 20,215, 20,216]

Before Danaher, Circuit Judge, Bastian, Senior Circuit Judge, and Leventhal, Circuit Judge.

JUDGMENT

These appeals came on to be heard on the record from the United States District Court for the District of Columbia and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the District Court entered on May 12, 1966 is remanded to the District Court with directions to modify the said judgment as follows:

1. Change paragraph 7 to read: "The notices of proposed changes in rules governing the use of firemen (helpers) as modified by the Award or actions under the Award served under Section 6 of the Railway Labor Act during the effective period of the Award were not premature. This ruling applies to the notices served by the BLF&E upon certain of the railroads referred to in Section I-K of the Stipulation and to the notices served by certain of the railroads upon the BLF&E referred to in Section I-S of the Stipulation."

2. Delete paragraph 8.

3. Renumber paragraph 9 as paragraph 8, and change that paragraph to read: "That aspect of the proposals (referred to in Section I-K of the Stipulation) served by the BLF&E upon certain of the railroads which was identified as "Notice No. 2" is invalid, and the railroads have no obligation to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act at any time with respect to that aspect of the proposals served by the BLF&E. Except for

or the offer by a railroad or railroads of comparable jobs to firemen (helpers) pursuant to their rules as modified by Section II of the Award and in accordance with paragraph 4 above; or (8) any other actions by a railroad or railroads, or failures or refusals to act, which are authorized by this Judgment.

11. The Court reserves jurisdiction of the proceedings claiming contempt referred to in Section II-C of the Stipulation, and this Judgment is without prejudice to the rights of any of the parties in such proceedings except insofar as issues which may be relevant thereto have been decided herein. The Court also reserves jurisdiction of the counterclaim for damages referred to in Section II-D of the Stipulation, and this Judgment is without prejudice to the rights of the parties with respect to the said counterclaim except insofar as issues which may be relevant thereto have been decided herein.

12. The Court reserves jurisdiction for the purpose of enabling any of the parties to this proceeding, or any person that may be or may hereafter become bound in whole or in part by this Judgment, to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this Judgment.

13. The Court having determined that there is no just reason for delay, it hereby directs pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that this Judgment be entered as a final judgment of the claims by the respective parties for a declaratory judgment and injunctive relief.

Dated: May 12, 1966

/s/ Alexander Holtzoff  
United States District Judge



paragraph 7 above, this Judgment does not determine any issue as to whether the railroads have an obligation to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to that aspect of the proposals served by the BLF&E identified as "Notice No. 3," and is without prejudice to the rights of any party in that regard."

4. Renumber paragraph 10 as Paragraph 9, and change that part of the paragraph commencing with "(5)" and continuing to the end of the said paragraph to read: "(5) the failure or refusal of a railroad or railroads to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to that aspect of the proposals served by the BLF&E identified as "Notice No. 2" declared to be invalid in paragraph 8 above, or the failure or refusal of a railroad or railroads to accept that aspect of the proposals; or (6) any other actions by a railroad or railroads, or failures or refusals to act, which are authorized by this Judgment."

5. Renumber paragraphs 11, 12 and 13 as paragraphs 10, 11 and 12, respectively.

APPENDIX D

[Civil Actions Nos. 777-66 and 784-66--Caption and recitals omitted.]

IT IS HEREBY ORDERED, DECLARED, ADJUDGED AND DECREED:

1. The Interstate Railroad is dismissed as a party to this consolidated proceeding, pursuant to the oral motion on May 4, 1966 by its counsel and by counsel for the Brotherhood of Locomotive Firemen and Enginemen. The remaining plaintiffs in Civil Action No. 777-66, including those named as defendants in Civil Action No. 784-66, hereinafter are referred to as the "railroads." The Brotherhood of Locomotive Firemen and Enginemen, which is the defendant in Civil Action No. 777-66 and the plaintiff in Civil Action No. 784-66, hereinafter is referred to as the "BLF&E."

2. A railroad and its employees represented by the BLF&E were subject to Public Law 88-108 and the Award by Arbitration Board No. 282 thereunder if the railroad either served the BLF&E with the Section 6 notice of November 2, 1959 (referred to in paragraph 6 of the Complaint in Civil Action No. 777-66 and in paragraph 11 of the Complaint in Civil Action No. 784-66) or was served by the BLF&E with the Section 6 notice of September 7, 1960 (referred to in paragraph 8 of the Complaint in Civil Action No. 777-66 and in paragraph 12 of the Complaint in Civil Action No. 784-66), or both, and

either notice remained outstanding throughout the period prior to the enactment of Public Law 88-108. All of the railroads and their employees represented by the BLF&E, consequently, were subject to Public Law 88-108 and the Award issued thereunder, including the railroads referred to in paragraphs 1 through 4 of Section I-C of the Stipulation (except to the extent that the application of the Award on the railroads referred to in paragraphs 1, 3 and 4 of Section I-C of the Stipulation was modified by the agreements entered into by such railroads and the BLF&E and attached as Exhibits A, B, D, E and F to the Stipulation, which agreements remain in full force and effect ).

3. The period during which Section II of the Award by Arbitration Board No. 282 "shall continue in force," as provided in Section IV of that Award pursuant to Section 4 of Public Law 88-108 and as extended by agreement, expired at 12:01 A.M. on March 31, 1966.

4. After the expiration of the Award, the railroads cannot terminate the employment of firemen (helpers) pursuant to the provisions of Paragraphs C(2), C(3), C(4) or C(6) of Section II of the Award and cannot offer comparable jobs to firemen (helpers) pursuant to the provisions of Paragraph C(6) of Section II of the Award.

5. The rules governing the use of firemen (helpers) in effect prior to the enactment of Public Law 88-108 were not restored upon the expiration of the Award. Subject to the provisions of paragraph 4 above, the modifications in those rules made by Section II of the Award and actions taken thereunder created a new status which is to be maintained after the expiration of the Award until changed by agreement or until the procedures of the Railway Labor Act (45 U.S.C. §§151-160) have been exhausted with

respect to valid notices served under Section 6 of that Act (45 U.S.C. §156) proposing changes in the status thus created. Unless otherwise agreed to by the parties, the railroads need not use firemen (helpers) on engines (other than steam powered) in freight and yard service except as required by the Award, including those provisions of the Award governing the rights of individual firemen (helpers) retained in engine service. Such individual firemen (helpers) shall continue to enjoy the protections of their rights to work which are provided in the Award, but the railroads need not hire a replacement for an individual fireman (helper) who retires, is discharged for cause or is otherwise removed from a railroad's active working list of firemen (helpers) by natural attrition, unless a replacement is needed to fill a position which was not subject to being abolished under the Award.

6. Those individuals who accepted offers of comparable jobs pursuant to Paragraph C(6) of Section II of the Award may continue in those jobs with the guarantees provided by the Award, but the railroads are not required to restore such individuals to fireman (helper) positions. Those individuals who were separated from employment by the railroads pursuant to the Award may retain the separation allowances paid to them in connection therewith, but the railroads are not required to restore such individuals to employment as firemen (helpers).

7. ~~Notices~~ The notices of proposed changes in rules governing the use of firemen (helpers) as modified by the Award or actions under the Award served under Section 6 of the Railway Labor Act during the effective period of the Award ~~were premature and could not become effective under Section 6 of the Railway Labor Act until the day after the expiration of the Award~~ were not premature. This ruling applies to the notices served by the BLF&E upon

certain of the railroads referred to in Section I-K of the Stipulation and to the notices served by certain of the railroads upon the BLF&E referred to in Section I-S of the Stipulation.

8.--The parties serving or receiving the notices referred to in paragraph 7 above were under no obligation to confer, bargain or negotiate about the merits of the proposals made in these notices until after the notices became effective as provided in paragraph 7 above.--The meetings described in Section I-L of the Stipulation, at which the railroads denied any obligation to negotiate about the merits of the proposals served by the BLF&E, did not constitute "conferences" within the meaning of Sections 5 and 6 of the Railway Labor Act (45 U.S.C. §§155, 156), and did not fulfill the requirement for conferences imposed by these Sections.--Resort to the National Mediation Board may be had only after the notices became effective and after conferences fulfilling the requirements of Sections 5 and 6 of that Act are commenced.--The applications by the BLF&E for mediation, referred to in Sections I-N through I-Q of the Stipulation, therefore were premature and do not become effective until after conferences fulfilling the requirements of Sections 5 and 6 of the Railway Labor Act are commenced.

9.--These aspects 8. That aspect of the proposals (referred to in Section I-K of the Stipulation) served by the BLF&E upon certain of the railroads which were was identified as "Notice No. 1" and "Notice No. 2" are is invalid, and the railroads have no obligation to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act at any time with respect to the said aspects that aspect of the proposals served by the BLF&E. Except for paragraph 7 above, this Judgment does not determine any issue as



to whether the railroads have an obligation ~~after the expiration of the Award~~ to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to that aspect of the proposals served by the BLF&E identified as "Notice No. 3," and is without prejudice to the rights of any party in that regard.

10- 9. The Brotherhood of Locomotive Firemen and Enginemen, each of its lodges, divisions, locals, officers, agents and employees, and all persons acting in concert with them, are hereby permanently enjoined from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages and from picketing the premises of any of the railroads over: (1) the failure or refusal of a railroad or railroads to restore or reinstate after the expiration of the Award by Arbitration Board No. 282 the rules in effect prior to that Award or to the enactment of Public Law 88-108; (2) the maintenance and application by a railroad or railroads pursuant to paragraph 5 above of the modifications made by the Award and actions taken thereunder in the rules in effect prior to the Award or to the enactment of Public Law 88-108, until such time as the status created by such modifications is changed by agreement or the procedures of the Railway Labor Act have been exhausted with respect to valid Section 6 notices proposing changes in that status; (3) the failure or refusal of a railroad or railroads pursuant to paragraph 5 above to use firemen (helpers) on engines (other than steam powered) in freight and yard service except as required by the Award, or to hire replacements for individual firemen (helpers) who retire, are discharged for cause or otherwise are removed from a railroad's active working lists of firemen (helpers) by natural attrition; (4) the failure or refusal of a railroad or railroads to restore or reinstate as firemen

(helpers) individuals who were separated from employment or given comparable jobs pursuant to the Award; (5) the failure or refusal of a railroad or railroads to confer, bargain, negotiate, participate in mediation or otherwise participate in procedures under the Railway Labor Act with respect to these aspects that aspect of the proposals served by the BLF&E identified as "Notice No. 1" and "Notice No. 2" declared to be invalid in paragraph 9 8 above, or the failure or refusal of a railroad or railroads to accept these aspects that aspect of the proposals; ~~(6) the failure or refusal of a railroad or railroads prior to the expiration of the Award to confer, bargain, negotiate or participate in mediation with respect to that aspect of the proposals served by the BLF&E identified as "Notice No. 3," or the failure or refusal of a railroad or railroads to accept that aspect of the proposals until such time as conferences and mediation have been had as provided in paragraph 8 above and the procedures of the Railway Labor Act otherwise have been exhausted; or~~ (7) (6) any other actions by a railroad or railroads, or failure or refusals to act, which are authorized by this Judgment.

~~11.~~ 10. The Court reserves jurisdiction of the proceedings claiming contempt referred to in Section II-C of the Stipulation, and this Judgment is without prejudice to the rights of any of the parties in such proceedings except insofar as issues which may be relevant thereto have been decided herein. The Court also reserves jurisdiction of the counterclaim for damages referred to in Section II-D of the Stipulation, and this Judgment is without prejudice to the rights of the parties with respect to the said counterclaim except insofar as issues which may be relevant thereto have been decided herein.

~~12.~~ 11. The Court reserves jurisdiction for the purpose of enabling any of the parties to this proceeding, or any person that may be or may hereafter become bound in whole or in part by this Judgment, to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this Judgment.

~~13.~~ 12. The Court having determined that there is no just reason for delay, it hereby directs pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that this Judgment be entered as a final judgment of the claims by the respective parties for a declaratory judgment and injunctive relief.

Dated: May 12, 1966.

/s/ Alexander Holtzoff  
United States District Judge